AMENDMENTS TO THE AFDC QUALITY CONTROL PROGRAM

HEARING

BEFORE THE

SUBCOMMITTEE ON PUBLIC ASSISTANCE AND UNEMPLOYMENT COMPENSATION

OF THE

COMMITTEE ON WAYS AND MEANS HOUSE OF REPRESENTATIVES

NINETY-NINTH CONGRESS

FIRST SESSION

ON

H.R. 1279

TO AMEND PART A OF TITLE IV OF THE SOCIAL SECURITY ACT TO IMPROVE QUALITY CONTROL STANDARDS AND PROCEDURES UNDER THE AFDC PROGRAM AND TO PROVIDE FOR STUDIES TO ASSIST IN THE FURTHER IMPROVEMENT OF SUCH STANDARDS AND PROCEDURES

JUNE 21, 1985

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AMENDMENTS TO THE AFDC QUALITY CONTROL PROGRAM

FRIDAY, JUNE 21, 1985

HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
SUBCOMMITTEE ON PUBLIC ASSISTANCE
AND UNEMPLOYMENT COMPENSATION,
Washington, DC.

The subcommittee met, pursuant to call, at 10:20 a.m., in room B-318, Rayburn House Office Building, Hon. Harold Ford (chairman of the subcommittee) presiding.

[The press release announcing the hearing, and the bill, H.R. 1279, follow:]

[For immediate release, Thursday, June 6, 1985]

HON. HAROLD FORD (D., TENN.), CHAIRMAN, SUBCOMMITTEE ON PUBLIC ASSISTANCE AND UNEMPLOYMENT COMPENSATION, COMMITTEE ON WAYS AND MEANS, U.S. HOUSE OF REPRESENTATIVES, ANNOUNCES A PUBLIC HEARING ON THE BILL H.R. 1279, AMENDING THE AFDC QUALITY CONTROL PROGRAM

The Honorable Harold Ford (D., Tenn.), Chairman, Subcommittee on Public Assistance and Unemployment Compensation of the Committee on Ways and Means, U.S. House of Representatives, today announced a hearing on the bill, H.R. 1279 introduced by Congressman Robert T. Matsui (D., Calif.), which would reform the quality control system. The hearing will be held on Friday, June 21, 1985 beginning at 10:00 a.m., in room B-318 Rayburn House Office Building.

Testimony will be received from invited witnesses only. Witnesses will be asked to discuss the current quality control system, improvements that are needed, and the bill, H.R. 1279. A summary of H.R. 1279 is available from the Subcommittee, in room B-317 Rayburn House Office Building, (202) 255-1025.

WRITTEN STATEMENTS SUBMITTED FOR THE RECORD

All other interested parties wishing to submit a written statement for inclusion in the record of the hearing are encouraged to do so. Persons submitting written statements should submit at least six (6) copies of their statements by the close of business, Friday, June 28, 1985 to Joseph K. Dowley, Chief Counsel, Committee on Ways and Means, U.S. House of Representatives, Washington, D.C. 20515. If those filing written statements for the record of the printed hearing wish to have their statements distributed to the press and the interested public, they may provide 75 additional copies for this purpose to the Subcommittee office, room B-317 Rayburn House Office Building before the hearing begins.

[H.R. 1270, 99th Congress, 1st Session]

A BILL To amend part A of title IV of the Social Security Act to improve quality control standards and procedures under the Aid to Families With Dependent Children Program, and to provide for studies to assist in the further improvement of such standards and procedures

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

IMPROVEMENTS IN AID TO FAMILIES WITH DEPENDENT CHILDREN QUALITY CONTROL STANDARDS AND PROCEDURES

SECTION 1. (a) Section 403(i) of the Social Security Act is amended to read as follows:

"(i)(1)(A) In order to establish and maintain improved quality control standards and procedures in the operation and administration of State plans approved under this part—

"(i) each State shall collect and submit to the Secretary, in accordance with a timetable which shall be established by the Secretary in regulations, a statistically reliable sample of the cases under its plan approved under this part during each fiscal year or (at the option of the State) during each of the two six-month periods in such year, for purposes of quality control review under this subsection;

"(ii) the Secretary shall review and analyze the sample so submitted and shall notify the State of its error rate for the period involved within six months after the close of the fiscal year or within six months after the date on which the sample is submitted, whichever is later; and

"(iii) the State shall develop and submit to the Secretary (except as provided by subparagraph (B)) a corrective action plan for eliminating or reducing errors identified as a result of the Secretary's review and analysis under clause (ii) (whether or not such errors are subject to inclusion for purposes of sanctions under this subsection) and, after such plan has been reviewed and approved by the Secretary in accordance with subparagraph (C), shall implement the corrective actions provided for in such plan in accordance with a timetable established by the Secretary in regulations; and the Secretary shall continuously monitor the State's corrective action under such plan.

"(B) The requirement (in subparagraph (A)(iii)) that States submit corrective action plans for eliminating or reducing errors may be waived by the Secretary in the case of any State which has consistently had an error rate below its error rate tolerance level (as determined by the Secretary, upon the request of the State, in the manner provided in subparagraphs (B) and (C) of paragraph (2)).

"(C) The Secretary shall establish criteria for corrective action plans submitted by States under subparagraph (A)(iii), and shall approve any plan so submitted upon determining that it meets such criteria. If a plan so submitted is disapproved, the Secretary shall specify (in notifying the State of such disapproval) the respect or respects in which the plan fails to meet the criteria so established, and shall provide appropriate advice and assistance to the State in eliminating such failure with the objective of facilitating the resubmission and approval of the plan at the earliest possible time.

"(D) The sample submitted under subparagraph (A)(i) by a State which collected such sample on an annual basis rather than electing to collect two six-month samples for the fiscal year involved shall in no case include a smaller number of cases than the number that the Secretary determines would be required for a statistically reliable sample if the State had elected to collect and submit two six-month samples for that fiscal year.

"(2)(A) Notwithstanding subsection (a)(1) (but subject to subparagraph (C) and paragraph (3)), if a State's error rate for any fiscal year (as defined in paragraph (6)) exceeds the error rate tolerance level determined for the State (for that year) under subparagraph (B), then the Secretary shall make no payment for such fiscal year with respect to the State's erroneous payments (as so defined) to the extent that the inclusion of such payments in determining the State's error rate caused such rate to exceed the tolerance level so determined.

"(B) A State's error rate tolerance level for any fiscal year shall be 4 per centum, increased by—

"(i) 0.5 percentage points if the plan of such State approved under this part provides (throughout such fiscal year) for the payment of aid with respect to dependent children of unemployed parents as provided in section 407,

"(ii) 0.1 percentage points for each full 20 per centum increment (up to a maximum of five such increments) by which (I) the ratio of the number of families with earned income who are receiving aid under such State's approved plan to the total number of families receiving such aid exceeds (II) the average ratio, per State, of the number of families with earned income who are receiving aid under all of the State plans approved under this part to the total number of families receiving such aid, and

"(iii) 0.1 percentage points for each full 20 per centum increment (up to a maximum of five such increments) by which (I) the population per square mile of land area in such State exceeds (II) the average population per square mile of land area, per State, in all of the States having plans approved under this part.

"(C) In determining the error rate in any State for purposes of this paragraph—

"(i) such rate shall be fixed at the lower bound of the standard interval for errors within which the State's true error rate falls (as determined without regard to this clause on the basis of the sample or samples collected and submitted by the State under paragraph (1)); and

"(ii) errors which are technical in nature or have no fiscal impact, such as omissions (from the State's files) of social security account numbers, assignments of support rights, declarations of cooperation in obtaining support, and WIN or other work program registrations, shall be disregarded.

"(D) The total amount of the sanctions that would otherwise be imposed upon a State under subparagraph (A) on account of an error rate in excess of the applicable error rate tolerance level for any fiscal year shall be reduced by the Federal share of any overpayments collected by such State (on account of erroneous payments) during that fiscal year.

"(3)(A) The Secretary, in accordance with this paragraph, may waive all or any part of any sanction that would otherwise be imposed upon a State under paragraph (2)(A) if such State is unable to reach the applicable error rate tolerance level for the fiscal year involved despite a good-faith effort by such State.

"(B) Any State may request a waiver of all or part of any sanction that would otherwise be imposed for any fiscal year under paragraph (2)(A), basing such request upon a showing—

"(i) that the State made (and is continuing to make) a good-faith effort to reduce or eliminate the erroneous payments involved but was unable to reach the applicable error rate tolerance level for such fiscal year despite that effort; or

"(ii) that (I) the Secretary's determination of the State's error rate for such fiscal year was made incorrectly or in a manner inconsistent with the provisions of this subsection, and (II) the State's error rate, if determined correctly and in a proper manner, would be lower than the rate so determined by the Secretary.

The Secretary shall consider and review such request, and either approve it or disapprove it in whole or in part, in accordance with a timetable which shall be specified in regulations. If the Secretary disapproves the request, the State may appeal the Secretary's decision to the Grant Appeals Board in the Department of Health and Human Services for such further action as may be provided for by law or regulations (including judicial review of the Secretary's decision or the Board's determination).

"(C) In considering and reviewing any request for a waiver submitted by a State under this paragraph, the Secretary shall take into account—

"(i) factors beyond the State's control (including disasters, strikes by State or other staff personnel engaged in determining eligibility or processing cases, sudden workload changes resulting from changes in Federal or State laws or regulations or from rapid caseload growth, and State actions resulting from incorrect policy interpretations by Federal officials);

"(ii) factors relating to agency commitment, including demonstrated commitment by upper level State officials to the error reduction program under this subsection, the sufficiency and quality of operational systems designed to reduce errors, the use of effective systems and procedures for the statistical and program analysis of quality control and related data, and effective management and execution of the corrective action process;

"(iii) the State's past performance with respect to erroneous payments, including past error rate levels and past error rate reduction efforts;

"(iv) the cost effectiveness of error rate reduction, both in general and in the particular circumstances existing within the State; and

"(v) such other factors as the Secretary may determine to be appropriate, as specified in regulations or as detailed by the State in its waiver request.

The Secretary's regulations shall specify the factors to be considered and the criteria to be used in assessing waiver requests under this paragraph, and shall indicate the relative weight or importance of each of such factors and criteria in order to assist States in determining the appropriateness of proposed requests.

"(D) Notwithstanding the preceding provisions of this paragraph, the Secretary shall in any case grant a waiver requested by a State under subparagraph (B) for any fiscal year if the State's corrective action plan submitted under paragraph (1)(C), or a separate plan for the reduction of errors submitted by the State along with its waiver request, provides in detail for the expenditure of additional State and local funds for the reduction of errors in such fiscal year in a total amount (over and above the amount of State and local funds that would otherwise be expended in such fiscal year for the administration of the State plan approved under this part) equal to or exceeding one-half of the net amount of the sanctions that would otherwise be imposed upon the State under paragraph (2)(A) for such fiscal year. Expenditures of additional State and local funds for the reduction of errors as provided for in the corrective action plan or separate plan described in the preceding sentence shall be considered (for purposes of subsection (a)) to be expenditures for the proper and efficient administration of the State plan approved under this part.

"(4) If a State's error rate for any fiscal year is less than 4 per centum, the Secretary shall pay to the State as an incentive payment an amount equal to one-half of the net amount by which Federal payments to the State under subsection (a)(1) for such fiscal year are reduced because such error rate is below 4 per centum.

"(5)(A) Each State agency administering a plan approved under this part shall, at such times and in such form as the Secretary may specify, provide information on the rates of erroneous payments made in connection with its administration of such plan, together with any other data which the Secretary may request that are reasonably necessary for the Secretary to carry out the provisions of this subsection.

"(B) If a State fails to cooperate with the Secretary in providing information necessary to carry out this subsection, the Secretary, directly or through such contractual or other arrangements as the Secretary may find appropriate, shall establish the error rates for that State on the basis of the best data reasonably available and in accordance with such techniques for sampling and estimating as the Secretary may find appropriate.

"(C) In any case in which it is necessary for the Secretary to exercise the authority under subparagraph (B) to determine a State's error rate for a fiscal year, the amount that would otherwise be payable to such State under this part for quarters in such year shall be reduced by the costs incurred by the Secretary in making (directly or indirectly) such determination.

"(6) For purposes of this subsection—

"(A) the term 'error rate', with respect to any State for any fiscal year, means the ratio of such State's erroneous payments for such year (as defined in subparagraph (B)) to its total payments under the State plan approved under this part for such year, determined subject to the adjustments provided for in paragraph (2)(C); and

"(B) the term 'erroneous payments' means—

"(i) payments to ineligible families receiving assistance, and

"(ii) overpayments to eligible families receiving assistance.

"(7) This subsection shall not apply with respect to Puerto Rico, Guam, or the Virgin Islands.".

(b) The amendment made by subsection (a) shall be effective only with respect to quarters in the fiscal year 1983 and subsequent fiscal years; except that such amendment may also be effective in the case of any State, at the election of the State made in such manner and within such time as the Secretary of Health and Human Services shall by regulation prescribe, with respect to quarters in the fiscal year 1982 or with respect to quarters in the fiscal years 1981 and 1982.

STUDY OF CLIENT ERRORS, BROADER PERFORMANCE MEASURES, AND RELATED MATTERS

SEC. 2. The Secretary of Health and Human Services shall study and analyze in detail—

(1) the nature of client errors under the Aid to Families With Dependent Children Program and the degree to which such errors could be controlled by States, including the development of standards by which to judge whether particular client errors could have been so controlled;

(2) the desirability and effect of including underpayments to eligible families as "erroneous payments" in determining a State's error rate, and (whether or

not they are so included) the steps which might be taken to monitor such underpayments and reduce their frequency;

(3) measures of a State's performance under the Aid to Families With Dependent Children Program which are broader than the current quality control system based on payment accuracy alone, and which might more accurately reflect the full range of responsibilities that States have in administering such program; and

(4) the cost effectiveness of error reduction, both considered in general and broken down with respect to particular methods of error reduction (specifically including error reduction of the type described in paragraph (1));

and the Secretary shall submit to the Congress within one year after the date of the enactment of this Act a full report of the results of such study and analysis together with the Secretary's suggestions and recommendations with respect thereto.

CONTINUATION OF FEDERAL FISCAL LIABILITY FOR ERRORS MADE IN ADMINISTERING STATE SUPPLEMENTATION PROGRAMS

SEC. 3. (a) The Federal Government shall continue to be liable to the States for errors made in payments of federally administered State supplementary benefits under section 1616 of the Social Security Act and section 212 of Public Law 93-66 (relating respectively to optional supplementation and mandatory supplementation of supplemental security income benefits), in cases where the Secretary of Health and Human Services is administering both optional and mandatory payments for a State and where the error rate in such payments exceeds an established national standard.

(b) The regulations published by the Secretary of Health and Human Services in the Federal Register on September 28, 1984, removing section 416.2086 of title 20 of the Code of Federal Regulations (relating to Federal liability when error rate in payment of federally administered State supplementation exceeds national standard), shall be of no force or effect. Effective for periods beginning on or after October 1, 1984, section 416.2086 of title 20 of such Code is reinstated in full force and effect; and no regulations hereafter proposed shall have the effect of removing or limiting the application of such section except to the extent specifically authorized by legislation hereafter enacted.

Chairman FORD. The Ways and Means Subcommittee on Public Assistance and Unemployment Compensation will come to order.

We will hear from one of our distinguished elected officials in this country, as well as the administration and from HHS on the legislation introduced by Congressman Matsui.

The subject of this morning's hearing is once again AFDC quality control. This is the third hearing that the subcommittee has held on the subject in the past year.

At our first session, witnesses discussed the need to reform the quality control system. Our second hearing examined the process HHS used to grant waivers of the fiscal sanctions for fiscal year 1981 and seemed to raise more questions than it answered.

Today, we will continue to review the 1981 waiver process and hear testimony on H.R. 1279, a bill introduced by Congressman Matsui, which would revise the system used to identify errors in the AFDC program.

Back in 1978, the Department of Health and Human Services asked us to delay permanent reform until a study could be completed. The study was to investigate whether factors beyond a State's control contribute to a higher error rate.

This information would help us to determine what a reasonable error tolerance level would be. In the interim, a 4-percent error rate standard would be established, and the Department indicated its willingness to modify that standard if warranted by the study.

That study was to take some 18 months, and in the 7 years since it was begun, the Department has asked us to lower the error rate

standard to 3 percent, but has never released the results of the original study, despite several recent requests by this subcommittee.

In my letter of invitation to HHS, I specifically asked the Department to explain the delay and tell us when we can expect to see this research.

I hope the Department will finally answer my questions and not simply point to other studies that have been done. Other studies may also be useful, but this research was promised to this subcommittee, and was designed to help us to establish a permanent error rate standard. It is time that HHS lived up to its end of the bargain.

It is clear to me three principles should guide our efforts to reform quality control.

First, the quality control system should be fair and should recognize that AFDC is a complex program and States cannot control all errors. Some errors are made by clients who are confused about the requirements of the law, and others are the results of demographics and other factors which the States cannot change.

Our Federal policy should recognize this.

Second, the quality control system should be accurate and timely. It should measure all types of error and help States to identify and eliminate fraud as well as waste.

To do this most effectively, the system must provide AFDC managers with error rate information promptly. States should be accountable for their performance and once a fair system is in place, States should be expected to meet reasonable error rate standards.

If the standards are not met, fiscal penalties should be imposed. These principles should guide us as we move ahead to reform the system. We are very delighted to hear our witnesses at this time.

The Chair would like to recognize the author of the legislation that is before us, the gentleman from California, Mr. Matsui.

Mr. MATSUI. I would like to take this opportunity to thank you again. You held hearings last October, and you are holding hearings again, and I appreciate your commitment to move ahead with the quality control education.

The States and the local officials throughout the United States need some congressional help in view of the HHS's inability to deal with this issue.

Mr. Chairman, I would like to raise basically two subjects. One, to get into, if time permits, exactly what happened in terms of the 1981 assessment and evaluation process, and two, certainly to probe with the witnesses about why they feel the changes proposed by H.R. 1279 are not required.

I think those points that you raised in your opening statement are well taken. We do need to examine the criteria, and I again appreciate very much your willingness to move ahead with this legislation.

Chairman FORD. Thank you very much.

At this time, the National Governors' Association is represented by the Governor of Vermont, Governor Kunin. We look forward to hearing from you and your testimony, and once again, welcome.

STATEMENT OF HON. MADELEINE M. KUNIN, GOVERNOR OF VERMONT, ON BEHALF OF THE NATIONAL GOVERNORS' ASSOCIATION, ACCOMPANIED BY VERONICA H. CELANI, COMMISSIONER OF SOCIAL WELFARE, STATE OF VERMONT

Governor KUNIN. I would like to introduce Veronica Celani, Commissioner of Social Welfare.

I would like to thank you on behalf of the National Governors' Association regarding the problems and needed reforms in the quality control system. I particularly appreciate that you have kept this item very much on the subcommittee's agenda and are holding the third hearing in this record.

I also am appreciative, as is the National Governors' Association, of Representative Matsui's sponsorship and great concern for this legislation.

Let me state at the outset that Vermont, like other States, is fully committed to the basic principle that benefits in all income-support programs, including AFDC, Food Stamps and Medicaid, should be made only to those who are eligible.

That is the underlying principle we adhere to. Vermont is known for its Yankee conservatism and pennypinching, and we don't like to waste money in any form—Federal, State, or anybody else's money—but we are also committed to a sense of fairness and believe that those who need help deserve it, and we also believe in a sense of fairness in the relationship between the Federal Government and the States.

That is also partly what is at stake here. As Governor, my top priority is to reduce our error rates to the lowest degree possible, and I will be tough in administering the Department of Social Welfare to achieve that.

So I fully respect the intent of the Federal Government here of being tough on the States and telling us we have to do better, and we have to do better to maintain the integrity of the system, to guarantee those benefits to our low-income population, and to keep faith with the taxpayer.

The basic question that I see here is one of degree. When do you reach a point of diminishing returns? When do you put the squeeze on? When do you make demands on State governments?

Certainly, some pressure is appropriate, but I believe that the sanction system as presently existing has reached a point of diminishing returns where you are actually receiving a return that is the reverse of what you intend.

Instead of creating a better administrative system, better quality control system, the imposition of these substantial sanctions can have the effect of crippling our administrative ability, as well as depriving some very worthy beneficiaries of benefits they need.

A second question, after you ask whether or not this cripples the system—and this is a question the States are increasingly asking under these difficult economic times from the States' point of view—is whether this is simply another shift in the economic burden from the Federal Government to the States, saying you pick up the tab.

This is a more subtle shift, but at the level at which it is being undertaken at the present time, it is another budget reduction strategy, and States like Vermont simply cannot afford it.

It is an interesting budget reduction strategy, because it is subtle. It doesn't have the same sense of potential mean-spiritedness as other reduction strategies because on the surface, it is in the name of efficiency, but if you look underneath it, the degree to which it is being imposed goes beyond that.

In addition to fears about shifting the burden, there is another question at stake here. I believe we as States, as Governors, want to continue to have a positive partnership with the Federal Government in administering these programs.

What we see developing right now is really a very contentious relationship; 26 States are appealing the 1981 error rate calculation. We are in the process of feeding lawyers instead of children and the elderly who need the benefits from these programs.

Another point to remember is that it is very difficult, frankly, for anyone in any administration and any political party to fully defend the existing welfare system.

We are always looking for innovations and new approaches. Our objective in the State of Vermont is to make people less dependent on welfare. It is in that spirit that we are very proud of the fact that we have an unemployed parent program.

We are 1 of 24 States that has that program; 12 percent of our recipients have independent earnings compared to 6 percent nationally. We are very proud of that.

Those innovations, those kinds of risk-taking actions that help to move people from the state of dependency into being proud and self-supporting, those are the factors that hurt us in meeting the error rates.

It is as if we are meeting two contradictory criteria. If you keep your head low and do the minimum, you will have a low error rate, but what does that mean in terms of social policy? How does that actually change the future of those people whose future we do want to have an impact on, and who do have the full potential to be self-supporting?

Certainly, we want to pay our dues and abide by the basic principles that only those who deserve help should get it, but we don't want to cripple the present system in our effort.

Let me give you a few excerpts from my written testimony.

The States are firmly committed to error reduction. States recognize the inevitability of some sanctions, but believe that such sanctions must be based on a fair system of measured and achievable targets.

Third, action is needed now to avoid an undesired impact on the ability of States and localities to meet human service needs.

The other point I stress is that States have made substantial progress and clearly there is a need for oversight in this regard. The figures may already be familiar to you, but the AFDC payment error rate has been reduced from 16.5 percent in 1973 to an unofficial 6.7 percent by September of 1982.

In Vermont, we are below the average. In 1981, our AFDC error rate was 5.2 percent, compared to 7.7 percent nationally, and in

1982, 4.5 percent compared to 7 percent nationally, but we are still receiving sanctions, despite our better than average record.

Chairman FORD. Without objection, your full testimony will be made a part of the record.

Governor KUNIN. Thank you very much.

I know the underlying assumption is that some of the States have excess funding. The States as a group have surpluses, while the Federal Government is struggling with a deficit.

I am sorry to say that Vermont doesn't fit that picture. Vermont does have a deficit which I inherited when I took office. We do not have a positive bank account at this point where we can simply write a check for whatever sanction is imposed on us.

Fortunately--and we are very grateful—the AFDC and Medicaid sanctions imposed on Vermont to date have either been suspended or waived, but we have not been so lucky with respect to Food Stamps.

We are anticipating possibly a $700,000 sanction in our Food Stamp Program. Let me put that in perspective. When you see $700,000, that looks like a small amount. You say, well, you can absorb that, but in the State of Vermont, our budget is smaller.

We have a small population, and with a 50-percent Federal match, the $700,000 is actually a loss of $1.4 million which represents 41 percent of the administrative costs charged to our Food Stamp Program annually. That is the impact we are talking about.

We would have to lay off 25 percent of the Food Stamp field workers, and greatly reduce the administration of the program or take it from other kinds of programs. That would make the very people that we want to help suffer unduly.

In conclusion, I reiterate that Vermont recognizes the problem of fairness. We want to do our share, but we also recognize that in order to be good administrators, in order to run a good quality control program, we have to have the means.

We recognize the responsibility of the Federal Government to assure the citizens of the United States that only the needy are getting help. We share that point of view, but we also strongly believe that in order to maintain a fair partnership between the Federal Government and the States, you have to look at the situation not only from the Federal perspective, but also from the State perspective, and finally from the point of view of the people who are dependent on financial aid.

Thank you.

[The prepared statement follows:]

STATEMENT OF HON. MADELEINE M. KUNIN, GOVERNOR OF VERMONT, ON BEHALF OF THE NATIONAL GOVERNORS' ASSOCIATION

Mr. Chairman, I want to thank you for the opportunity to testify before the Subcommittee on behalf of the National Governors' Association regarding the administration of the AFDC program and the problems and needed reforms of the quality control system.

I want to especially thank you, Representative Ford, for keeping this issue at the top of the Subcommittee's agenda. While quality control system reforms and erroneous payments are not pleasant topics, we believe it is essential that Congress address these issues and draft legislative solutions.

As an excellent beginning on such a legislative solution, we wish to commend Representative Robert Matsui for his legislation, the AFDC Error Reduction and Quality Control Improvement Act, H.R. 1279. This comprehensive effort to tackle

the problems of the quality control system is extremely helpful in our effort to restore the system back to sound management principles. The Governors commend him for his courage to bring the issues out into the open and support the basic reforms identified in his bill.

I want to emphasize that quality control system reforms do not stand alone but that they are an essential beginning toward the public confidence which will be required for the future development of a national uniform income security program. The National Governors' Association has long supported the development of a national income security policy which provides for a minimum income level for basic needs based on a national measure of need. We also believe that the federal government should, over time, accept the primary responsiblity for financing income security programs.

Such a policy would recognize that the alleviation of poverty is a national concern which often exceeds the capacity of any single state. To successfully alleviate poverty, national policy must be uniform, eliminate gaps in coverage, reduce complexity which leads to errors and foster increased efficiency.

The Governors are willing to play a significant role in administering these programs efficiently. We strongly are opposed, however, to actions which will shift federal costs to the states. Therefore, we would urge that the Subcommittee address the quality control system and other program administrative issues as an integral part of its continuing attention to basic reforms.

My testimony will cover four major points:

1. States are firmly committed to error reduction and have made substantial progress without the imposition of sanctions.

2. States recognize the inevitability of some sanctions, but believe that such sanctions must be based on a fair system of measurement and achievable targets.

3. Action is needed now to avoid an undesired impact on the ability of states and localities to meet human service needs.

4. The proposals in Representative Matsui's bill represent a substantial improvement in the current quality control system and we support their adoption.

STATE PERFORMANCE IN REDUCING ERROR RATES

States have made excellent progress in reducing errors in the AFDC, Food Stamps and Medicaid programs. Indeed, without the official collection of any fiscal sanctions, the AFDC payment error rate had been reduced from 16.5 percent in 1973 to an unofficial 6.7 percent by September 1982, the Food Stamp program payment error rate had been reduced from 16.0 percent in 1974 to 8.36 percent by September 1983, and the Medicaid payment error rate had been reduced from 6.2 percent in 1978 to 2.5 percent by March of 1984.

As Governors, we are held accountable for the performance of these three programs. That responsibility led to a commitment by Governors and their Human Service Administrators to root out waste and move the income support systems toward administrative efficiency. Commitment to efficiency is the key to reducing erroneous payments and has been the primary factor in state performance over the past decade.

In addition, Governors are subject to constant oversight by the press, the public and the state legislature to operate these programs with a minimum of errors. I cannot emphasize more the importance of this pressure to manage these programs efficiently. News stories concerning large amounts of state dollars spent incorrectly are an excellent incentive for states to reduce errors.

Finally, in the AFDC and Medicaid programs, states, and in many instances localities, have a major financial interest in proper administration. Each error costs us state dollars we can ill afford to expend. The Governors are concerned that these benefits be targeted to those eligible. Avoidable payments to ineligible families or overpayments are unacceptable.

I wish to point out that states do achieve close to 100 percent accuracy on most major eligibility factors. However, due to the complexity of these programs and the large number of eligibility factors, the aggregate error rate can be over the current 3 percent tolerance level even if there is a very small error rate, typically under 1 percent, for each factor of eligibility. This cumulative effect is important to understand as the best administered program is unlikely to be able to avoid all errors for each factor.

There are four key reasons why it is so difficult to reduce error rates below 3 percent and maintain them there. First, the program eligibility requirements are very complex because federal and state governments want to target benefits to the neediest. Two, it is impossible to detect all errors at the initial eligibility review. State

and federal quality control reviewers, who have much more time to do reviews and who have the ability to use more verification sources like computer systems, tend to find income and resources which can not be found at the initial review. Third, eligibility rules are constantly changing: there was OBRA in 1981, TEFRA in 1982, DEFRA in 1984, and now HHS is seeking regulatory changes to reduce program costs and coordinate rules with the Food Stamp program. Finally, problems with the federal rereview and statistical error rate computation methodology biases the system toward the appearance of higher error rates.

THE CURRENT QUALITY CONTROL SYSTEMS ARE UNFAIR

We believe there are five basic problems with the current Quality Control systems.

First, the 3 percent error rate tolerance for the AFDC program is not reasonable. Despite substantial investment by all the states, only one state has been able to meet and maintain the three percent tolerance level for two years in a row. Further, only three states have been able to meet and maintain a four percent tolerance level for three consecutive six-month reporting periods. For the reasons I just cited, it seems clear that it is very difficult or near impossible for most states, let alone all states to achieve and maintain a three percent error rate.

Second, the current AFDC Quality Control System counts "technical" errors and unavoidable "client" errors in the official error rates as well as overstates actual state errors.

"Technical errors" relate to administrative requirements such as WIN registration and the assignment of social security numbers to all welfare recipients. Correcting these errors will make the client eligible for the program, not eliminate the client from the rolls. While these requirements may produce longer-term savings through increased efficiency of training or support programs, the short-term investment of resources for corrective action does not produce program savings. While the Administration argues that eliminating technical errors from the official rate will reduce state diligence to reducing them, I must point out that this is not accurate. For example, states have continued diligently to reduce underpayment and negative case action errors even though these errors are not counted as part of the official error rate.

Client-caused errors must continue to be measured. However, we should recognize that states have limited control over these client-caused errors. While the federal government should hold states to reasonable performance requirements in reducing client-caused errors, fiscal sanctions for these errors do not appear justified.

Error rates are computed based on samples of cases, and therefore the rates are statistical estimates. The true error rate, therefore, is not known. Sanctions are now based on the midpoint of the estimate, rather than the lower end of the statistical range. As a result, states may be penalized for more errors than are actually committed.

Third, the federal delay in releasing error rate data makes it extremely difficult for the states to plan and implement effective, responsible corrective actions. In all three programs, the federal data lag—by at least a year—behind the states' own measurement of their performance. For example, HHS did not notify states of their final AFDC error rates for FY 1981 until March 1983, one and a half years later. Further, the federal delay in reporting quality control findings is unreasonable given the reporting requirements that states must meet. While states can begin action based on their own findings, the federal review data is vital in order to make final decisions on the type of action needed.

Fourth, the current Quality Control System ignores the cost-effectiveness of corrective actions when determining whether a state should be provided relief from fiscal sanctions. States may be receiving waivers of fiscal sanctions in the AFDC, Food Stamps and Medicaid p ograms when their error rates are above the performance targets, but cost effectiveness of corrective actions is not a criterion used for granting such waivers.

Fifth, the quality of federal reviews ofthe state sample of cases differs among the various federal regions and results in disparities in the way states are treated. These differences are the result of varying expertise of staff and differing policy interpretations of regulations.

THE NEED FOR IMMEDIATE ACTION

Unless the Congress acts quickly to correct the problems in the current quality control system and to establish a more reasonable fiscal sanctions policy, the states, according to HHS and the Congressional Budget Office, face close to $1.5 billion in

fiscal sanctions liability for fiscal years 1981 through 1989. This is on top of unofficial estimates that fiscal sanctions in the Food Stamps and Medicaid programs over roughly the same period of time will be almost $1 billion.

In fact, HHS Secretary Margaret Heckler has already sent letters to 26 Governors imposing fiscal sanctions of $82.2 million for AFDC and Medicaid program errors in 1981. HHS has also announced Medicaid liability for FY 1982 and for April through September 1983, and will shortly announce FY 1982 liability for the AFDC program. The Department of Agriculture recently announced state liabilities for errors in FY 1983.

The resulting shift of costs from the federal to state governments will have an immediate and significant impact on the ability of states to finance human service programs. While the states are in better financial condition than a few years ago, this is because most states either cut their budgets or raised taxes. Current ending balances may be positive, but economic growth is uncertain, and therefore the fiscal outlook for the states is uncertain. There is no guarantee that all states will be able to maintain or improve current programs in light of such combined penalties.

I want to give you a personal perspective at this point. My state, unlike many others, is attempting to retire a substantial deficit. We do not have a positive balance to fund fiscal sanctions and cannot increase taxes to pay for sanctions. We have already raised taxes to pay off the deficit. Thus, the payment of fiscal sanctions must come from services.

Fortunately, the AFDC sanctions imposed on Vermont to date have been either suspended or waived. We have not been so lucky with respect to the Medicaid and Food Stamps programs. We are especially concerned about the potential consequences of a threatened $700,000 sanction in our Food Stamp program.

I'm certain that to many of you—or at least to your governors and welfare program officials—a $700,000 sanction would be little more than a minor budget adjustment. This is not the case in Vermont.

Although our Food Stamp Benefits cost approximately $22 million annually, our Administrative Budget for the Food Stamp Program is modest by comparison.

Due to loss of the 50% federal match, a $700,000 sanction is actually a loss of $1.4 million to Vermont. This figure represents about 41% of the administrative costs charged to our Food Stamp program annually. Moreover, it is important to recognize that nearly three-fifths of our Food Stamp program administrative costs are incurred in local field offices.

Some of the actions which would be necessary to absorb this loss are as follows: Cutting training by half; termination of systems development efforts for our Food Stamp program; laying off 10 FS field workers; and readjusting overhead costs in order to spread them over to other programs.

Such actions would, no doubt, bring about serious repercussions. The loss in Food Stamp program personnel alone would result in a field staff reduction of greater than 25%. We predict that such a reduction in staff would have a devastating impact on efforts to achieve our error rate goals. Not to speak of the potential impact on our ability to serve recipients.

Our only alternative to the actions described above would be to reduce the budgets of other entitlement programs. In order to accomplish this, optional programs would have to be eliminated. For example, cancellation of the Unemployed Parents-AFDC program; or under Medicaid, discontinuance of the medically needy program or coverage for prescription drugs. All these actions would ultimately hurt the needy people we are trying to serve.

The point I want to make here is that the fiscal sanctions component of the federal quality control program, as currently administered, fails to support—and in fact is a barrier to—the achievement of the original objectives of the quality control program and jeopardizes our ability to provide for the needs of poor families and children.

It is vital that the federal government and the states work together to preserve human service programs for the poor at this time when there are over 35 million Americans living in poverty, according to the Bureau of the Census. Moreover, the poverty rate for female headed households and blacks as separate groups have not dropped below 32 percent and 30 percent respectively since data was first collected 25 years ago. And according to a recent report by the Congressional Research Service and the Congressional Budget Office over 20 percent of all children live in families below the poverty line and the poverty rate for children climbed by 41 percent from 1974 to 1983.

In addition to the pressure on human service programs, fiscal sanctions at the level projected will force states to again increase administrative costs will little or no evidence that such expenditures will be cost-effective.

Finally, the current level of penalties will force states into costly and time-consuming litigation designed to avoid these penalties. Such litigation may well force the abandonment of the current sanction system and is a less than productive use of either federal and state resources.

REPRESENTATIVE MATSUI'S CORRECTIVE LEGISLATION

As noted before, the Governors strongly support Representative Matsui's reform bill and I would like to comment specifically on a number of the major provisions. NGA adopted a policy on Quality Control Error Rate Sanctions at our meeting in February and this policy is the basis of my comments.

THE TOLERANCE LEVEL

While NGA's quality control policy supports the establishment of error rate tolerance levels based upon demonstrated state achievement, it appears that the federal government prefers an arbitrary tolerance level. Clearly we prefer the 4 percent level in Mr. Matsui's bill to the 3 percent level in current law, especially when the bill also would adjust tolerance levels for program and demographic factors. Equally important, we feel the 4 percent level is more closely related to actual performance although as pointed out before only a handful of states have maintained that level.

DEMOGRAPHIC AND PROGRAM ADJUSTMENTS IN THE TOLERANCE LEVEL

We strongly support the provisions in the bill to adjust the tolerance levels on a state specific basis. The bill's adjustments, based upon whether a state has an Unemployed Parent Program, the prevalence of earners in a state's AFDC caseload and population density, are reasonable factors for adjustments. While these do not exhaust the possible factors, we feel quite comfortable with them.

TECHNICAL ERRORS

As discussed above the correction of these errors will have little impact on the actual level of AFDC expenditures. It is critical therefore, that these errors are removed from the official error rates for fiscal sanction purposes.

USE OF THE LOWER BOUND OF THE CONFIDENCE INTERVAL

We support the bill's use of the lower bound of the confidence interval as the official statistical error rate. We believe this is the "best" estimate because it will provide the federal and state governments a 97.5 percent probability that the official error rate is not an over-estimate. The issue here is not solely statistical, in addition, this change serves to limit the level of fiscal sanctions which will be imposed. It will help keep the pressure on states to reduce error rates, but the sanctions, if they are imposed, will be less punitive.

QUALITY CONTROL SYSTEM REFORMS

We support the provisions of the bill which would place strict time limits on federal reviews of state decisions and which would adjust the "good faith waiver" and "corrective action" planning processes so that both past state error rate performance as well as cost-effectiveness of error reduction efforts be considered.

The provision providing for analysis of the cost-effectiveness of corrective actions is critical. States must do cost-benefit analysis of corrective actions to know where to best invest limited resources so that they will reduce the most errors. It just makes sense for the federal government to approve only cost-effective corrective actions and not force states into ineffective corrective actions.

OTHER REFORMS

Several other reforms in Representative Matsui's bill, while not covered by NGA policy, seem reasonable:

1. Providing incentive payments if a state's error rate is below the 4 percent tolerance level.
2. Requiring the Secretary to waive a fiscal sanction if a state submits a corrective action plan which pledges expenditure of additional state funds equal to one-half the sanction amount.
3. Requiring the Secretary to reduce the sanction for the federal share of overpayments collected by the state.

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4. Requiring Annual or Semi-Annual Sampling Periods. Current regulations require us to conduct monthly sampling. In low-population states, such as Vermont, monthly samplying results in small sample sizes which can undermine the reliability of the sample. By requiring annual or semi-annual samplying periods, H.R.1279 would eliminate this weakness in the current program.

Furthermore, we support the bill's optional provision for states to apply the reforms in this bill for fiscal years 1981 and 1982 or to use the statutory requirements for those years. The NGA policy supports a waiver of all previous period liabilities until the systems are reformed. In the absence of a waiver, the option in the bill for 1981 and 1982 is acceptable.

We also want to note our support for the studies of client errors, the cost-effectiveness of corrective actions, and broader performance measures.

We strongly suggest that Congress give serious consideration to addressing state administrative performance beyond "error rates." The Department of Health and Human Services has published a profile of state performance in the AFDC program for 1981. In that document the cost of state administration and the quality of service to AFDC applicants and recipients are analyzed. Perhaps Congress should require the Department to further develop such measures so that an entire state program can be evaluated.

Finally, we support Representative Matsui's proposal to reinstate federal fiscal liability in the Supplemental Security Income program (SSI). The unilateral federal action last fall eliminating fiscal liability in SSI was unfair and inappropriate, particularly at a time when the Administration is arguing for continuing sanctions for the federal/state AFDC program. While the law does not require the federal government to assume liability for erroneous payments of federally administered state SSI supplements, such a step was clearly consistent with the federal approach to errors in the state programs. The elimination of federal fiscal liability reflects no real change in status or administration of these programs. Instead, like unrealistic error sanctions in AFDC, Medicaid and Food Stamps, it merely serves to transfer current federal costs to states and localities.

Although the Matsui bill primarily addresses the AFDC quality control program, similar problems have been identified in the Food Stamp quality control program. Representative Jeffords of Vermont has recently introduced H.R. 2621 which proposes remedies similar to those included in H.R. 1279. Thus, I encourage you to give it your serious consideration and support. It would be very helpful to the states for quality control in AFDC and Food Stamps to be as consistent as is possible.

CONCLUSION

At the heart of the problems discussed above is a shift by the federal government away from the original purpose of the quality control systems. While administration and congressional policy makers continue to insist that the quality control systems are management tools, the focus on error rate sanctions suggest alternative purposes have higher priority. That is, it appears that the purpose of sanctions has become federal budget control and reduction of federally supported caseloads by shifting costs to states. The changing purpose of the quality control system can have a negative impact upon state fiscal conditions, state operations, and upon recipients of aid.

The states have a financial interest in reducing avoidable errors in all needs-tested programs. They are working toward that goal in partnership with the federal government. But they cannot continue to do so under threat of crippling, unfair sanctions. The quality control system must be reformed to restore its usefulness as a management tool. Congress must act—soon.

Let me conclude by stating that accountability is a two-way street. The rules for the Margarets (i.e., federal government) should be similar to those which the Madeleines (i.e., states) must live by. The current program has too often involved a double standard.

It would be fundamentally wrong to exploit the quality control program for revenue purposes while offering nothing to the states in return. If current fiscal sanction policies are fully implemented, states will experience higher, not lower, error rates. Furthermore, states will be forced to cut back on other services and financial aid for the needy so that they can continue to administer the AFDC, Food Stamp and Medicaid programs. This is not the outcome you and I seek for our means-tested welfare programs.

Chairman FORD. I thank you.

You talked about your support of the Matsui bill. You make mention of the fact that you support many of the provisions within the bill calling for reforms.

Is that to say that you support the entire bill, the reform package that the Matsui bill contains?

Governor KUNIN. Yes, we do. Most pertinent is the provision raising the percentages from 3 to 4 percent, but we do support the entire bill. Perhaps you would like to add to that?

Chairman FORD. Would you state your name for the record?

Ms. CELANI. Veronica Celani. We definitely support every provision within the Matsui bill, and I realize that there are some budgetary implications, and I imagine that would be something you would need to examine, but very important to us are the sections that refer to the lower level of the interval of confidence in the statistical estimate, and the provision raising the tolerance to the 4-percent level.

We think some of the distinctions between States are very important, for example, whether you have an unemployed parent program, or a particular population density. Those various provisions that relate to those distinctions are very important for us.

Chairman FORD. The administration's position is that the existing quality control system does not need any reform, and that the current policy is needed to encourage States to lower their error rates.

You talked about this, but just once again, would you respond to the administration's position of encouraging us to leave the present policy alone and make no changes?

Governor KUNIN. I don't quarrel with the intent of the administration's policy, but you can only squeeze a stone so much, and that is really what is at issue here. How far do you go?

When do you reach a point of no return? I certainly share the point of view that we have to run a perfectly honest system, and that is our intent, but when you simply shift the cost and the total responsibility from the Federal Government to the States, you are weakening the system that you are trying to strengthen.

Chairman FORD. You are adding some fiscal responsibilities to the States.

Governor KUNIN. Absolutely. Where is the money going to come from? In the end, our choices are very limited. We cannot raise taxes even further. The State of Vermont just raised taxes to eliminate its deficit.

Chairman FORD. What form of taxes did you raise?

Governor KUNIN. Income, corporate taxes, and it is a substantial tax package.

Chairman FORD. Due to what? Reconciliation and some of the cuts we have witnessed in social programs or block granting or just what?

Governor KUNIN. Partly due to that. Due largely to the Federal tax changes, Vermont is piggybacked to the Federal Government in its tax structure.

Chairman FORD. You had a deficit when you took office, so it was not totally related to all of the budget cuts that have taken place in the last 5 years in the Congress?

Governor KUNIN. I took office last January, so that it was related somewhat to those earlier budget cuts.

Chairman FORD. Your predecessor was a part of this, during his administration?

Governor KUNIN. That is right.

Chairman FORD. Mr. Matsui?

Mr. MATSUI. Thank you very much, Governor, for your testimony. I might just point out that, and you certainly know this, that in testimony of April of this year, HHS appeared before this subcommittee and set forth those six States that received waivers, Vermont, your State, was included in that group, so you will not be penalized for the 1981 error situation.

First, I would like to commend you and your State for that effort. You got your error rate down from 11.4 in 1980 down to 5.2 percent in 1981.

Your testimony underscores the fact that this is not just a matter that each individual State is fighting over in terms of their own self-interest. This is a matter that we are all concerned about nationally.

Here you are testifying even though you were not hurt by the decision made by HHS in April of this year, and I appreciate that.

Governor KUNIN. Thank you. I might add, sir, that doesn't guarantee the future.

Mr. MATSUI. I understand that. What I find to be ironic, is that we are talking about 1981, and I guess Governor Snelling was still Governor at the time. If in fact Vermont had been penalized, you would have had to deal with that problem, even though it was some 5 years later, a different administration, and different welfare director. It doesn't make sense.

In our legislation, one of the requirements is a 6-month time limit that HHS must get back to the States to let them know what their situation is in terms of correcting their plans. I certainly think that makes a lot more sense. I hope you do as well.

Governor KUNIN. Absolutely. That is a really critical part of the legislation.

Mr. MATSUI. If I might, may I just ask you a couple other questions as well. You have indicated that an important aspects of the legislation is the fact that there are different variables. Each State is different in the sense that some may have high population densities, and others may have a program such as you have.

Could you please, if you may, explain exactly what you mean by that in terms of these variables and how important they are, in terms of determining what State should suffer or not suffer these penalties?

Governor KUNIN. For example, we have an unemployed parent program of which I am exceedingly proud. When I was a State legislator, I fought very hard to retain that program, because it keeps families together. It is one of those subtle kinds of reform programs, but it does mean that whenever you have something more elaborate, it is harder to keep your error rate down.

The number of people who are employed, who are also receiving additional welfare support is high in the State of Vermont.

Again, we consider that good public policy, but good public policy does not necessarily coincide with the ability to lower error rates, and we are also a rural State.

That is a factor, so that our population is very, very spread out. Perhaps you would like to add some other factors.

Ms. CELANI. There are technical errors, for want of a piece of paper, one case can drive up our error rate one whole percentage point.

In a two-person family, they have a child who dropped out of school and should be WIN-registered. The paper is not in the case register. If the child was registered, the case would be eligible, but because we have not known that this child happened to drop out that month, it is an error. For us with a small caseload and sample size, trying to reach tolerance levels of 3 percent, that case can drive us right over.

The other thing about the statistical point is that the way the quality control program is administered, half the time we may be actually under our error rate instead of over.

Yet, because of that statistical methodology used, we would be penalized. Again, we share in your concern. We pay for the benefits of this program.

We pay for the administration. I would not be Welfare Commissioner for long if I did not have an interest in reducing error rates in all of these programs.

I think that, therefore, it is obviously of concern to us if, because of a statistical aberration, we are penalized substantially, and I think the Federal Government, in fairness, would want to make sure that that does not occur.

Mr. MATSUI. Let me ask you, and this would be my last question, about the issue of certainty. In April, the representative from HHS suggested that perhaps there may be some revisions of their so-called corrective action plan, and also their process in determining waivers, and I have even heard rumors that they may suggest some changes today or in the near future.

How important is certainty in terms of your situation as a welfare director?

Ms. CELANI. For us certainty is very, very important, because of the implications for the beneficiaries of these programs. I think that it would be better to make sure that we are feeding children than to assume that half the time we are in error, and we would take those moneys away.

Mr. MATSUI. You would prefer this quality control area to be embodied in legislative language with congressional input rather than regulation?

Ms. CELANI. Yes; we have waited for regulations from HHS for many, many years. We have not seen anything, so I would feel much more comfortable for the State of Vermont if this were in legislation.

Mr. MATSUI. Thank you.

Chairman FORD. Mr. Campbell?

Mr. CAMPBELL. Welcome, Governor.

You said that you agreed with the establishment of some type of threshold for quality control. Under the current criteria, I am told that 24 States met their error rate standards.

It seems that we are here arguing for those only that did not make it. Would you agree that my assumption may be correct?

Governor KUNIN. Depends which year and which time of year you are talking about. I understand that only one State, Nevada, met all the criteria for 36-month periods, and that only two States have met the criteria.

Mr. CAMPBELL. Which year were you given a waiver for?

Ms. CELANI. 1981.

Mr. CAMPBELL. That is the year I am talking about.

Governor KUNIN. The State of Nevada met the 3 percent target for four consecutive periods, and one State, North Dakota, met the 4-percent target for four periods, and two States——

Mr. CAMPBELL. Do you have 1981? All of that?

Ms. CELANI. The year you are talking about, the target was not 4 percent. States could meet that target, whatever their target happens to be, because they had to reduce their error rates by increments of one-third to reach the target.

We are talking 4 percent now, and 3 percent presently, and we could not say that the States could meet that target. That is where we can say that only Nevada has met in 36-month periods that target rate and only two States could meet the 4 percent. To say that the target is reasonable is just highly speculative, and if only that many States can meet that target, I have problems presuming that that is a reasonable target.

Mr. CAMPBELL. I would agree with you that a State which had a better record at the start of a sample period would have a harder time meeting a percentage reduction.

I would also tend to agree that a smaller State might have a little more difficulty because of the fact that they had fewer cases to work with, and those would tend to be skewed more by the individual case, or a very few cases.

I guess what I am driving at is, according to what we have in 1981, if there were 24 States that met their targets, and how many came in for waivers?

Ms. CELANI. Twenty-six States.

Mr. CAMPBELL. Twenty-six States came in for waivers, so about half the people didn't ask for relief and half did.

Do we change it all to give relief for those that ask for it? We don't give anything to those who have been judged to have succeeded in their effort. Do we go back and change the rules to give relief, at a copy of $1.5 billion or less in the face of the budget crisis?

What I am asking you, I guess, is how much should we try to protect the taxpayers' money social welfare programs? How much should we try to protect the administration of that program? How much should we try to impose? The Federal Government does not run the programs. The States run the programs, and if the States are going to run the programs with the Federal money, how much accountability should we ask for the taxpayers?

I guess that is the issue. Half the States have said they met the earlier criteria and therefore, that accountability was met. Some of the States didn't meet it, and they say, OK, we don't need to have that tight accountability.

How tight should we have it?

Governor KUNIN. That is the basic question. I don't fully agree with you on your figures that half the States met and half the States didn't.

We have to try to nail that down over a period of time, because the figures I have don't indicate that that is true.

Mr. CAMPBELL. Sanctions were not brought against one-half but were against the other?

Governor KUNIN. Did that happen in 1982?

Mr. CAMPBELL. The only year we were dealing with was 1981. There are going to be different States that do different things for 1982 and 1983, and there will be different changes and some that qualified in a year like 1981, and in a later year would not.

Governor KUNIN. In the States that do not meet targets, as a result of the sanctions they receive, if they have to cut back on the administrative cost, have to shift that burden for higher tax rates or cut other kinds of services, then the sanctions are not appropriate.

If the sanctions tighten up your process up, don't waste money, then they are appropriate and that is what we are really debating here, where that line should be.

I believe this legislation establishes a more equitable line. It doesn't say do away with sanctions, or quality control. None of us would argue for that. It is a question of how far do you go, where you impose an undue hardship and where you are shifting the cost burden of AFDC from the Federal Government to the States.

Mr. CAMPBELL. The Federal Government draws its money from the people, and would it be right in your argument to ask the people of Nevada to subsidize the people of South Carolina by giving us more money if we were not doing the job?

Governor KUNIN. We are not asking that. We are also paying our share of these costs, as you well know. Once in a while the people of Vermont might be subsidizing somebody else in other areas of the budget. What we are asking is fair and equal treatment so we can, in fact, do our job. The long-term goal of any social welfare program is to get people off of welfare.

A lot of these incentives—frankly, a lot of these sanctions—work in the opposite direction.

Mr. CAMPBELL. If we were to amend the criteria and set a new set of criteria that had to be met and half the States didn't meet it then, would you think that maybe we ought to come back and review it again?

Governor KUNIN. That is a very hypothetical question. I would like to see what you would come up with and work with that.

Mr. CAMPBELL. The more liberal we are, the easier it is for the States to comply. The tighter we are with the taxpayers' money, the harder it is going to be for the States to comply.

Our question is, how much responsibility do we have and how much do the States running the programs have?

The point you make, the data base that we work from, perhaps some of that should be changed from the way we judge whether you are in compliance or not to keep the figures from being skewed by very small samples.

That is something that we need to address. I am not yet convinced that we need to liberalize the target, just because of States

not meeting it, but I am certainly willing to look at it and I appreciate your testimony.

I think it was excellent testimony and some of the things that you are doing are to be commended and I hope emulated in other areas.

Governor KUNIN. I think we are in agreement in one area, and that is that we should be good administrators at the State level, that none of us have the intention of wasting the taxpayers' money, whether it is Federal or State.

Where we may disagree is that this is a legitimate budget reduction strategy, and you may not believe that either, but that is one of the underlying implications since sanctions are built into the budget for specific savings.

Mr. CAMPBELL. Well, this is a mythical area of the budget that we always talk about saving money by cutting out waste, fraud, and abuse.

Chairman FORD. Mr. Pease.

Mr. PEASE. Would you object if we held you to the same high standards as the Pentagon in matters of this sort?

Governor KUNIN. I would object. I would want my standards to be different.

Mr. PEASE. Well, I would like to pick up where Mr. Campbell left off. I think your testimony has been excellent this morning in this series of hearings. The hearings are really devoted to seeing whether the error rate requirements are reasonable or not, and whether they will actually accomplish the goal for which they were intended.

Clearly the more we tighten up the error rates, the more money the Federal Government will save. We could make the standard impossibly strict and save the whole cost of the program, for that matter.

The question is not whether it is good to have penalties, but whether the penalties and the structure for imposing them will achieve the purpose for which they were intended, and your testimony has been excellent along that line.

I was glad to see you do recognize the need for some Federal sanctions.

Governor KUNIN. That is correct.

Mr. PEASE. Like you, I used to serve in a State legislature and was involved in State government for about, 10 years. In your testimony you mentioned that Governors are subject to constant oversight by the press and the public and by the legislators, and in addition, you have a major financial stake, and that is true.

All of that was also true 10 years ago before there were Federal sanctions and the error rates were significantly higher, so I am convinced that there is a role to play for Federal sanctions. The question, as I said before, is what is a reasonable sanction to impose.

Governor KUNIN. Precisely.

Mr. PEASE. Thank you.

Chairman FORD. Mrs. Kennelly.

Mrs. KENNELLY. Thank you very much, Governor, for being with us this morning.

In a document entitled "HHS Staff Analysis of H.R. 1279," the HHS states that it opposed—or it is opposed to the section of the bill that would require the Secretary to approve corrective action plans because this would constitute inappropriate and unnecessary Federal intervention in the States' administration of the AFDC programs.

Later in this same document, HHS opposes requiring the Department to consider cost effectiveness in the quality control program, because this would be unnecessary intrusion into State management practices.

My commissioner, Steve Heinz, continually tells me he thinks the quality control program is—I guess he goes so far to say an intrusion into the management of States, and here we have been talking about whether the last two, Mr. Pease and Mr. Campbell, whether the Federal sanctions is correct for the Government.

Do you think HHS is being a little coy here, or is this something we just put up when we talk about Federal-State?

Governor KUNIN. I believe there is an appropriate role for Federal sanctions, and for the Federal Government.

As has been pointed out by other people on the committee, it is a question of degree. How far do you go? When do you say we want to run a good and fair program?

We want all States to meet certain standards, and I think that is very legitimate.

The question is how far do you take that, so that you damage the ability of a State to run a good program.

Let me give you an ironic example which is not in AFDC, but in the Food Stamp Program.

Vermont recently was commended by the Department of Agriculture for putting in a state of the art computerized system for food stamps. We were encouraged to do that.

We received Federal funding to build up the computer system and at the same time, we are receiving sanctions for error rates in our food stamp program. One of the reasons we have excessive error rates is because we went to this computerized program which meant a whole turnover in procedures. It was appropriate for the Federal Government to assist us, to move along into a better program, to help us to do that, but then they should recognize that there are consequences, at least for the short period of time. In the long-term, I think it will be a very efficient program.

Ms. CELANI. Concerning the first part about the injection of the Federal Government into the corrective action process, the bill does not require that the Secretary specify the type of corrective action.

The bill suggests that the Secretary should establish criteria for corrective action plans and approve them, which would bring them in much earlier into the process. They right now evaluate the corrective actions during the waiver process, and sometimes the cost of those corrective actions are not taken into consideration during the waiver process.

If anything, you can be penalized for not implementing something that would have been too costly to implement in the first place, so we feel we must establish a partnership by involving them in the process earlier on.

Mrs. KENNELLY. Rather than continue these kinds of discussions, which we have had for quite a while, we should have a piece of legislation so everybody knows where they stand.

Governor KUNIN. Right.

Chairman FORD. Thank you for appearing before the committee. Thank you again for your testimony.

The committee will call the U.S. Department of Health and Human Services, Jo Anne Ross, Assistant Commissioner for Family Assistance with the Social Security Administration before the committee.

In addition to testimony on H.R. 1279, I am interested in covering some other points today.

I would like to know why the study of the quality control system promised by the Department in 1978 has not been published, and that study, promised in 1978, was due in 18 months. In the 7 years since the study was begun, the Department has asked Congress to lower the error rate standard to 3 percent but never released a study and the results of the original study, despite several requests by this subcommittee, we requested from HHS to do so.

I also want to know what is the Department's definition of good faith. I ask this because five States that cited their corrective action effort as a part of their waiver request for 1981 were denied waivers even though their corrective action plan scores indicated, in the Department's own words, "extraordinary effort."

The reason for this denial as expressed by the Department's witnesses at our April 25 hearing was concern about the risk of litigation in granting waivers to States that substantially exceeded their target error rate. In response to our request for any written legal opinion, the only thing we received was an analysis prepared by the acting general counsel of HHS that discounts the legal risk of granting waivers to States solely on the basis of their corrective action plans.

This is more than a technical point. The law provides that States that miss their target error rate can apply for waivers of fiscal sanctions based on good faith efforts. Yet States that exhibited that good faith were denied their waiver.

This bureaucratic catch-22 is explained away by concern over litigation risk. Yet the one piece of paper that examined that litigation risk concludes that it is minimal and I would like to be told exactly how the Department interprets the good faith waiver provision of the law.

We have tried for some time to get a response from the Department and we would like to know, Ms. Ross, you have appeared on several occasions before this subcommittee and we would like to get some answers today, and if not today, hopefully in the very near future, and those are some of our concerns and we would like to have the Department respond to us.

STATEMENT OF JO ANNE B. ROSS, ASSOCIATE COMMISSIONER FOR FAMILY ASSISTANCE, SOCIAL SECURITY ADMINISTRATION

Ms. Ross. I am pleased to appear before the subcommittee on behalf of the Secretary and I am hopeful that my testimony will

clarify some of your concerns, and whatever is not addressed, we can handle through the questions and answers.

As the subcommittee requested, I will limit my oral remarks this morning to 10 minutes and I would request that my complete testimony be made a part of the record.

Chairman FORD. Without objection.

Ms. ROSS. Your subject today is the Aid to Families With Dependent Children Quality Control System, and I know that you have specific questions about that system. But I believe those questions can be answered only within the context of the purpose of quality control and the way in which the present system evolved.

Almost 3.7 million families with dependent children rely on AFDC for assistance. Implicit in our responsibility to administer this important program is a commitment to make sure that the benefits we provide go to those for whom they were intended.

When this obligation is not met, it undermines not only the fairness of the program, but also public confidence in it—and I am sure you know better than anyone how important public trust and confidence are to the continuation of an effective AFDC program.

The measure of how well we are meeting our obligation to spend AFDC funds properly is the error rate--that is, the percentage of benefits which are misspent. I am sure that you agree that the error rates of the past—16.5 percent in 1973, for example—are intolerable, and, in fact, are a serious miscarriage of responsibility both to taxpayers and to recipients.

The AFDC Quality Control System is simply the vehicle we have developed to establish the rate of erroneous expenditures and to help us reduce erroneous payments to the lowest level possible. In so doing, it helps us keep faith with both recipients and the public at large, and it helps us to be better stewards of both State and Federal resources.

When I testified before this subcommittee in October, I outlined in some detail the 20-year history of the QC system's development. I won't take the time to repeat myself today, but I would like to note that it was not until 8 years into the QC program, in 1973, that all States completed their required QC samples.

Why 1973? Because it was the first year in which fiscal disallowances were tied to error target rates. The significance of the introduction of fiscal disallowances becomes even more pronounced when we consider that high error rates cost States substantial amounts of their own money as well as adding to Federal program costs.

Before this Federal requirement, States made no concerted effort on their own to control this waste of resources. This suggests strongly that the prospect of Federal fiscal disallowances, although only a small proportion of the amount of misspent State funds, are a strong motivating factor in the State's commitment to error rate control. And, since AFDC is a State-administered program, primary responsibility for reducing errors lies with the States.

In 1979, dissatisfied with progress in lowering error rates and the pace of Federal regulations, Congress established by statute 4 percent as a maximum error limit up to which the Federal Government would match.

This limit was to be achieved by fiscal year 1983 in annual, one-third increments. In 1982, Congress further emphasized its determination to limit Federal funding for erroneous payments by establishing a 3-percent maximum error limit for Federal matching to take effect in fiscal year 1984.

These standards were 20 years in the making. Thus, it is clear that implementation of these congressionally enacted standards was not a surprise to anyone.

Further, the fiscal disallowances are not penalties or fines. They simply are a limit on the level of misspent money which the Federal Government is willing to match. In 1981, for example, almost $1 billion in AFDC funds were misspent—about 54 percent Federal money and 46 percent State funds. The excessive erroneous payments for that year total only $73 million, or 1.1 percent of States' AFDC budgets.

States which reduce their error rates to statutory limits have full Federal matching of their errors. They also save substantial money from their own budgets. For example, one State is subject to a $313,000 disallowance for fiscal year 1981. Yet, that same year it misspent $7.7 million of State money in the AFDC program. This money could have been saved if erroneous payments had been controlled.

The QC process yields far more than an error rate. Case reviews show what kinds of errors are being made and give strong indications as to how they can be avoided. This information, as well as other State data, forms the basis for State corrective action activities, which are a critical part of the process.

Effective corrective action activities require strong commitment and a great deal of work. And these efforts have yielded results.

Error rates are dropping substantially. But the question remains—are the statutorily set Federal limits for matching erroneous payments reasonable? Yes.

Evidence that States can control their error rates can be seen in the experience of those which have made error reduction a high and continuing priority.

Another fundamental question to be asked is to what extent the Federal Government should match payments made in error by States. Congress has sent a clear message that it is determined to limit sharply that practice.

In short, the AFDC QC system has been studied, tested, developed, and fine-tuned for 20 years. It is working effectively and I urge you to leave it intact.

As for the fiscal disallowances required by the Michel amendment for erroneous expenditures over Federal matching limits, I discussed the fiscal year 1981 process with you at length when I appeared before you in April.

During the first year review, the Secretary concluded that a waiver would not be appropriate if corrective action efforts were not substantiated by actual performance. She determined that not only must a State achieve a high score on the evaluation of corrective action efforts, but also, the State's actual performance must not belie that evaluation.

And, in fact, as discussed at the April 25th hearing, she included such performance-based criteria in making her decision on the

fiscal year 1981 waiver requests. Based on this experience from the first year review, the Secretary will issue a Notice of Proposed Rulemaking to make explicit criteria concerning circumstances under which States may seek waivers of disallowances for fiscal year 1982 and subsequent years.

I would like to note that both the Michel amendment and TEFRA give the Secretary authority to waive these disallowances only in "certain limited cases," and both statutes give her discretion to establish standards under which a State should be given a waiver.

The proposed regulations would modify the portion of the existing rules which address the timely development and implementation of a corrective action plan reasonably designed to meet the target error rate. In order to apply for a waiver on this basis under the proposed regulations, States would be required to meet a performance-based threshold—that is, their error rates would have to be within 10 percent of their target error rates.

The regulations also would establish more definitive criteria, which the Secretary will use to evaluate waiver requests based on corrective action. These criteria will include the extent to which the State followed AFDC quality control procedures, error reduction initiatives, wage-matching activities and accountability of staff at all levels for effective error reduction activities.

This regulatory change would have the effect of clarifying what constitutes a good faith effort and expediting the waiver review process.

I know that one of your purposes in being here today is to discuss H.R. 1279. The administration strongly opposes this bill because it contains a number of provisions which would undermine the integrity and reliabilty of the AFDC QC system.

With the subcommittee's permission, I will submit for the record the administration's bill report which goes into detail on the provisions in H.R. 1279.

If enacted, H.R. 1279 would have serious budget ramifications. We estimate that it would add almost $1.5 billion to the President's budget during the fiscal year 1985-90 period. These additional Federal dollars would not benefit those for whom AFDC was intended.

Rather, the bill's effect would be to divert scarce Federal dollars to finance a greater proportion of erroneous payments. Moreover, the commitment to error reduction would inevitably weaken. Higher error rates would further drain both Federal and State budgets.

In summary, H.R. 1279 would undermine our carefully developed program for controlling erroneous AFDC payments. Further, it would contradict the clear message Congress sent in 1979 and 1982 that it expected Federal AFDC funds to be used properly.

Error rates are coming down. The system is working. I urge you not to undo the progress that has been made, and not to undermine public confidence in our stewardship of public resources.

[The prepared statement follows:]

STATEMENT OF JO ANNE B. ROSS, ASSOCIATE COMMISSIONER FOR FAMILY ASSISTANCE, SOCIAL SECURITY ADMINISTRATION, DEPARTMENT OF HEALTH AND HUMAN SERVICES

Mr. Chairman, I am pleased to appear before the Subcommittee on behalf of the Secretary.

Your subject today is the Aid to Families with Dependent Children Quality Control system, and I know that you have specific questions about that system. But I believe those questions can be answered only within the context of the purpose of quality control and the way in which the present system evolved.

Almost 3.7 million families with dependent children rely on AFDC for assistance. It is the only source of cash income for many of these families. Implicit in our responsibility to administer this important program is a commitment to make sure that the benefits we provide go to those for whom they were intended.

When this obligation is not met, it undermines not only the fairness of the program, but also public confidence in it—and I'm sure you know better than anyone how important public trust and confidence are to the continuation of an effective AFDC program. The measure of how well we are meeting our obligation to spend AFDC funds properly is the error rate—that is, the percentage of benefits which are misspent. I'm sure that you agree that the error rates of the past—16.5 percent in 1973, for example—are intolerable, and, in fact, are in a serious miscarrage of responsibility both to taxpayers and to recipients.

The AFDC Quality Control system is simply the vehicle we have developed to establish the rate of erroneous expenditures and to help us reduce erroneous payments to the lowest level possible. In so doing, it helps us keep faith with both recipients and the public at large, and it helps us to be better stewards of both State and Federal resources.

Quality control for AFDC is not a new idea. Its importance was recognized 20 years ago when Congress first expressed concern over the amounts of money being misspent in the program. The system, which was put in place at that time, has been developed, improved and refined over the years. Now it is both a statistically reliable measure of erroneous payments and a foundation for a management tool which provides States with the information needed to develop strategies which they can use to control erroneous spending.

When I testified before this Subcommittee in October, I outlined in some detail the history of the QC system's development. I won't take time to repeat myself today, but I would like to note that it was not until eight years into the QC program, in 1973, that all States completed their required QC samples. Why 1973? Because it was the first year in which fiscal disallowances were tied to error target rates. The significance of the introduction of fiscal disallowances becomes even more pronounced when we consider that high error rates cost States substantial amounts of their own money as well as adding to Federal program costs. Before this Federal requirement, States made no concerted effort on their own to control this waste of resources. This suggests strongly that the prospect of Federal fiscal disallowances, although only a small proportion of the amount of misspent State funds, are a strong motivating factor in the States' commitment to error rate control. And, since AFDC is a State-administered program, primary responsibility for reducing errors lies with the States.

In 1979, dissatisfied with progress in lowering error rates and the pace of Federal regulations, Congress established by statute 4 percent as a maximum error limit up to which the Federal government would match. This limit was to be achieved by FY 83 in annual, one-third increments. In 1982, Congress further emphasized its determination to limit Federal funding for erroneous payments by establishing a 3 percent maximum error limit for Federal matching to take effect in FY 84.

These standards were 20 years in the making. Thus, it's clear that implementation of these Congressionally enacted standards was not a surprise to anyone.

Further, the fiscal disallowances are not penalties or fines. They simply are a limit on the level of misspent money which the Federal government is willing to match. In 1981, for example, almost a billion dollars in AFDC funds were misspent—about 54 percent Federal money and 46 percent State funds. The excessive erroneous payments for that year total only $73 million, or 1.1 percent of States' AFDC budgets. States, which reduce their error rates to statutory limits, have full Federal matching of their errors. They also save substantial money from their own budgets. For example, one State is subject to a $313,000 disallowance for FY 81. Yet, that same year it misspent $7.7 million of State money in the AFDC program. This money could have been saved if erroneous payments had been controlled.

A means by which States are able to reduce error rates is the QC system. I'd like to take just a moment to explain how the current system works.

The first step is a State review of a statistically valid sample of case records. The QC reviewer checks the case records and conducts a field investigation to determine whether the recipient was, in fact, eligible, and, if so, if the proper benefit level was paid.

The next step in the process is Federal re-review of a portion of the State's sample. The Federal QC reviewer follows similar procedures.

When differences between Federal and State findings are identified, a "Difference Letter" is prepared for each case, and appeal procedures are provided.

Once a final resolution of whether there was an error is reached, the official error rate is determined by a formula which takes into account both State and Federal findings.

However, the QC process yields far more than an error rate. Case reviews show what kinds of errors are being made and give strong indications as to how they can be avoided. This information as well as other State data forms the basis for State corrective action activities, which area critical part of the process.

A corrective action plan, which is submitted to OFA each year, includes the State's analysis of the most recent QC findings as well as findings from prior periods, descriptions of corrective actions planned, explanations of the benefits expected from the corrective actions, and descriptions of the methodology for evaluation. In addition to the plan itself, States submit a progress report during the year. These reports provide an evaluation of corrective action activities, the status of implementation of scheduled corrective actions, discussion of error rate changes and discussion of any new corrective actions initiated since the annual plan.

Through a variety of formal and informal channels, OFA works with States on a continual basis to help them find ways to reduce their error rates.

For example, in FY 84, OFA held nine regional corrective action/error reduction conferences, covering all regions and States. Last year, we funded 195 technology transfers, which allowed States to share information with each other. All of these were related to management improvement, and about one-fifth were directly related to error reduction and corrective action. Additionally, we have distributed a variety of written materials which provide helpful information to States about techniques which have been demonstrated to be effective in reducing error rates.

Obviously, effective corrective action activities require strong commitment and a great deal of work. And these efforts have yielded results. Error rates are dropping substantially. But the question remains—Are the statutorily set Federal limits for matching erroneous payments reasonable? Yes. Evidence that States can control their error rates can be seen in the experience of those which have made error reduction a high and continuing priority.

Another fundamental question to be asked is to what extent the Federal government should match payments made in error by States. Congress has sent a clear message that it is determined to limit sharply that practice.

In short, the AFDC QC system has been studied, tested, developed and fine-tuned for 20 years. It's working effectively and I urge you to leave it intact.

As for the fiscal disallowances required by the Michel Amendment for erroneous expenditures over Federal matching limits, I discussed the FY 81 process with you at length when I appeared before you in April.

During the first year review, the Secretary concluded that a waiver would not be appropriate if corrective action efforts were not substantiated by actual performance. She determined that not only must a State achieve a high score on the evaluation of corrective action efforts, but also, the State's actual performance must not belie that evaluation. And, in fact, as discussed at the April 25th hearing, she included such performance-based criteria in making her decision on the FY 81 waiver requests. Based on this experience from the first year review, the Secretary will issue a Notice of Proposed Rule Making to make explicit criteria concerning circumstances under which States may seek waivers of disallowances for FY 82 and subsequent years.

I would like to note that both the Michel Amendment and TEFRA give the Secretary authority to waive these disallowances only in "certain limited cases," and both statutes give her discretion to establish standards under which a State should be given a waiver.

The proposed regulations would modify the portion of the existing rules which address the timely development and implemented of a corrective action plan reasonably designed to meet the target error rate. In order to apply for a waiver on this basis under the proposed regulations, States would be required to meet a performance-based threshold—that is, their error rate would have to be within 10 percent of their target error rates.

The regulations also would establish more definitive criteria which the Secretary will use to evaluate waiver requests based on corrective action. These criteria will include the extent to which the State followed AFDC quality control procedures, error reduction initiatives, wage-matching activities and accountability of staff at all levels for effective error reduction activities.

This regulatory change would have the effect of clarifying what constitutes a good faith effort and expediting the waiver review process.

I know that one of your purposes in being here today is to discuss H.R. 1279. The Administration strongly opposes this bill because it contains a number of provisions which would undermine the integrity and reliability of the AFDC QC system.

With the Subcommittee's permission, I will submit for the record the Administration's bill report which goes into detail on the provisions in H.R. 1279. At this time I will simply highlight some of our concerns.

First, the bill would increase Federal matching for erroneous payments from 3 percent to a minimum of 4 percent. The new 4 percent error rate limit would be further adjusted upward on a State-by-State basis according to "socio-economic" or "administrative" factors including the State's population density and the size of the State's AFDC caseload with earnings. As I stated earlier, our experience with States which have made error reduction a high priority, has demonstrated that a 3 percent Federal matching limit is reasonable. There are many administrative factors, totally within the control of the State, which have been found to have pronounced effects on States' error rates, but there is no way to definitively measure the exact effect on the error rate of these administrative factors—or of any socioeconomic factors.

For example, we have found that failure of States to redetermine recipient eligibility within prescribed time periods results in significant levels of erroneous payments. Touche Ross and Company has just completed a study which shows many States have not fully implemented many of the specific practices which appear to have the greatest impact on AFDC errors. I might add that many of these steps are inexpensive to operate.

A second major provision of the bill would require that a State's official error rate be the lower bound of the statistical confidence interval. The midpoint of the confidence interval, which is currently used, is universally accepted by statisticians as the best estimate of a State's error rate. While there are upper and lower confidence bounds around a midpoint estimate, there is just as much probability that the true error rate is at the upper bound as at the lower bound. Though we are convinced that our formula is sound, States which have concerns about the reliability of the error rate can increase their sample size. This option currently is available to all States, and Federal matching is available for any additional costs.

Third, the bill would omit certain types of errors from the calculation of States' error rates. These would include the so-called "technical errors," such as agency failure to obtain in the case files Social Security Account numbers, failure to obtain assignment of support rights, declarations of cooperation in obtaining support, and WIN and other work program registrations.

I say "so-called technical errors" because to use this expression, I am afraid, minimizes the importance of these errors. They are not simply technicalities. Rather, they represent basic statutory conditions of eligibility and, as such, are critical to the integrity of the entire program. Compliance and documentation of these requirements can have a substantial effect on eligibility and payment. For example, if the State had documented a Social Security number, a bank or wage match might have uncovered resources or earnings which would have impacted AFDC eligibility or payment.

Just last year, Congress, in the Deficit Reduction Act of 1984, enacted an income verification requirement. Income verification depends on accurate Social Security numbers for data matches to ensure that applicants and recipients receive the amount of AFDC assistance they are entitled to.

In addition, these so-called technical errors are totally within control of the State or local agency and therefore can by definition be corrected by the agency.

Fourth, the bill would allow the revised QC provisions to apply retroactively—that is, beginning with FY 83 and subsequent fiscal years. It would also permit States to choose which set of standards they would follow for FY 81 and FY 82. By permitting States to choose the set of standards to follow, the bill ignores the fact that almost half of the States met the FY 81 target established by Congress in 1979, and about the same number are expected to meet the targets for FY 82. This would undermine both current and future error reduction efforts.

Fifth, the bill would make several changes to the current QC disallowance waiver process. One of these would require the Secretary to automatically waive disallowances if States agree to spend additional State administrative funds equal to one-

half of the disallowance. These expenditures would be a Federally-matched administrative expense. We oppose this provision. There is no evidence which indicates that a States' error rate will decrease in proportion to administrative dollars spent on corrective action. This provision could encourage States to increase administrative costs for corrective actions which are not cost effective, solely to gain added Federal funds.

Sixth, the bill would direct the Secretary to complete a study within one year of enactment which would include among areas to be studied, a detailed analysis of recipient errors. We view this as unnecessary. The Touche-Ross study, which I referred to earlier, looked closely at recipient errors and recommends cost-effective corrective actions that States can take in order to reduce the number of recipient errors. In addition to this newly released study, HHS has already prepared various technical assistance materials for the States on ways to control the most prevalent client errors.

States can look to findings and methods of their own QC reviewers, who discover the recipient errors for ways to control them. After all, if the State QC reviewer can discover the error, the State eligibility worker should be able to also.

Finally, if enacted, H.R. 1279 would have serious budget ramifications. We estimate that it would add almost $1.5 billion to the President's budget during the FY 85-90 period. These additional Federal dollars would not benefit those for whom AFDC was intended. Rather, the bill's effect would be to divert scarce Federal dollars to finance a greater proportion of erroneous payments. Moreover, the commitment to error reduction would inevitably weaken. Higher error rates would further drain both Federal and State budgets.

In summary, H.R. 1279 would undermine our carefully developed program for controlling erroneous AFDC payments. Further, it would contradict the clear messages Congress sent in 1979 and 1980 that it expected Federal AFDC funds to be used properly.

Error rates are coming down. The system is working. I urge you not to un-do the progress that has been made, and not to undermine public confidence in our stewardship of public resources.

Mr. MATSUI [presiding]. Thank you very much.

Mr. Ford was requested to meet with some people at this time and he will be back in 20 to 25 minutes.

You have indicated the costs of the bill before us, H.R. 1279, is approximately $1.5 billion over a 5-year period. You do know that the Congressional Budget Office came up with a study that indicated a 5-year period cost to this bill is $256 million; is that correct?

Ms. Ross. The information that I have on the CBO estimates, Mr. Chairman, indicates that the total cost estimated by CBO is $822 million. That is over the 5-year period of fiscal years 1986 to 1990.

Mr. MATSUI. Let me, if I may, get into a few areas with you that pertain to your testimony of April 25. The reason I want to do it is because I frankly think that there has been a lot of confusion as to exactly what the States can and cannot rely upon in terms of what HHS is doing or what they may intend to do at some future time.

For example, you stated on April 25 that there was no decision made at HHS when the letter of transmittal and the methodology was sent to the Office of Management and Budget. Am I correct in understanding your testimony of April 25?

Ms. Ross. Yes, Mr. Chairman.

Mr. MATSUI. As I recall, you indicated that it was not a recommendation, and you were still in the preliminary stages of making a decision. In other words, if I can clarify that testimony, you are saying that among the people at HHS that are in decisionmaking positions, that they did not really make a decision at all in terms of a preliminary decision as to what criteria would be used, is this correct?

Ms. Ross. As I explained in April, and I would be happy to clarify today, I was involved in the process of the Secretary's review of the waiver requests for fiscal year 1981 and the decisionmaking process, when the transmittal was made to OMB. The draft letters, as I indicated on April 25, represented the application of one of many methodologies that were being considered by the Department at that time. They did not represent a final decision.

Mr. MATSUI. But it did represent the best effort of HHS, and HHS's preliminary decision, is this correct?

Ms. Ross. I don't think it is accurate to categorize it as a preliminary decision. We were reviewing a number of methodologies at that particular time.

That was one of them.

Mr. MATSUI. The reason I ask this is because I realize that no decision is final until it is actually officially recorded and reported out. But, when I use the word "decision," I mean you people sat down and talked and decided to discuss various methodologies and you came up with a decision that you were either seeking ratification or at least some comments by OMB.

That is what I mean by a decision. If I use that definition of a decision, would you say then that a decision was made at HHS?

Ms. Ross. It is absolutely fair to say that we were certainly seeking comment from the Office of Management and Budget on methodology.

Mr. MATSUI. I understand you wanted to seek comment from OMB, but you wanted to seek comment on the decision that you all at HHS agreed upon?

Ms. Ross. I did not agree to any decision. I am having a very difficult time and I am not trying to be difficult with you, but, as I indicated, that was one methodology of many that we were discussing.

The Department was interested in having OMB review that particular methodology so we sent it over for review.

Mr. MATSUI. The reason I am probing in this area is because Mr. O'Shaughnessey wrote a cover letter to John F. Cogan, with the Office of Management and Budget and in fact his first paragraph, his first sentence reads: "Enclosed are draft letters to States informing them of decisions on their request for waivers of disallowance related to AFDC and medicaid error rate targets under the Michel amendment dated February 8, 1985."

I presume that is the date that this information was submitted.

Ms. Ross. I would assume that it is the date.

Mr. MATSUI. What kind of definition did Mr. O'Shaughnessy use when he used the word "decision" in that particular transmittal letter?

Ms. Ross. It would not be possible for me to respond to that because I was not aware of that transmittal letter until the time it was released to the committee after April 25.

Mr. MATSUI. Mr. O'Shaughnessy was not aware of it either.

Ms. Ross. I was not aware of any cover letter. It did not come from me, but the fact that it was sent by the Assistant Secretary of Management and Budget, as opposed to the Office of the Secretary, to OMB indicates it was not considered a decision. The use of the

words "draft letters" implies that they are not in fact decisions on the part of the Secretary.

Normally, when we transmit to OMB a decision that the Secretary has made which she wants OMB to review it is transmitted with her signature, officially in final form, as opposed to a draft unsigned document.

Mr. MATSUI. It was signed by Mr. O'Shaughnessy, Assistant Secretary for Management and Budget of HHS.

Ms. Ross. I realize that and I saw the document.

Mr. MATSUI. If his use of the word "decision" is inaccurate—well, is it inappropriate?

Ms. Ross. I can't speak for him.

Mr. MATSUI. I know I asked him to appear before the subcommittee today.

Perhaps we can take a recess here for a moment.

[Recess.]

Mr. MATSUI. Will the meeting please come back to order.

Mr. Campbell will be arriving shortly. I was advised by his staff that we might as well go ahead.

Ms. Ross, I would like to make a correction. I made an error myself, and you corrected me—and I appreciate it very much—in terms of the cost estimates. For the record, it is my understanding from 1985 to 1988 CBO says that the cost of our bill would be $257 million, and HHS says it will be $998 million. However, from 1985 to 1990, that 5-year period, HHS says it will cost $1.5 billion, and CBO says $822 million, as you corrected me. And I would like to state that for the record, because you are in fact correct.

It is my understanding—and perhaps you can rebut this or whatever—the reason the outyear costs increase significantly is because by then the States will have gotten their error rates down significantly, so that any errors over that with any waivers do result in a larger amount.

Is that your understanding, as well?

Ms. Ross. It is my understanding that the reason for the variation between the administration's cost estimate and the CBO's cost estimate is largely due to the anticipated date of collections for the disallowances, and that, in fact, our estimate anticipates that we would collect the disallowances earlier than the CBO estimate. Both estimates include the outyears. CBO's estimate excludes some disallowances that we believe would be collected prior to 1990.

Mr. MATSUI. Thank you.

The issue of decisions, we both made our points. All I am asking is that we go back and look at what happened early this year in terms of a reasonable person concept. In other words, what is really reasonable in terms of how we interpret these facts.

In the February 8 letter, the word "decisions" is used in that letter. But, you are saying that the definition used is different than I would interpret this language. I would like to include this February 8 letter from Mr. O'Shaughnessy in the record, along with an attachment to the Governor of the State of California. He indicates in this letter, a mere draft letter, not signed, but from Margaret Heckler, your Secretary, that California would receive a waiver of 70.25 percent of the disallowed amount.

I realize that that was preliminary and is not even a decision, because you people didn't make this decision. But I feel it is important that this document be placed in the record because for you to send over to the Office of Management and Budget, through Mr. O'Shaughnessy, the cover letter with the word "decision" in it, along with 28 letters to different Governors of the States requesting waivers, saying that they would waive percentages of the penalties, is significant, particularly in terms of our legislation. So, I would like to submit that for the record, if I may.

[The information follows:]

DEPARTMENT OF HEALTH AND HUMAN SERVICES,
Washington, DC, February 8, 1985.

Mr. JOHN F. COGAN,
Associate Director for Human Resources, Veterans and Labor, Office of Management and Budget, Washington, DC.

DEAR MR. COGAN: Enclosed are draft letters to States informing them of decisions on their requests for waivers of disallowances related to AFDC and Medicaid error rate targets under the Michel Amendment. The letters (28) provide details on the scoring used as the basis for the waiver decision in each case. There are additional letters reporting Medicaid waiver decisions for four States (Delaware, Rhode Island, Alaska, and West Virginia) which will be forwarded to you as soon as they are completed.

I have also enclosed a listing of the 1982 AFDC error rates and disallowance amounts by State. You should be aware that States have not yet been informed of these data nor has anyone in the Congress.

Yours truly,

JOHN J. O'SHAUGHNESSY,
Assistant Secretary for Management and Budget.

Enclosures.

THE SECRETARY OF HEALTH AND HUMAN SERVICES,
Washington, D.C.

Hon. GEORGE DEUKMEJIAN,
State Capitol, Sacramento, CA.

DEAR GOVERNOR DEUKMEJIAN: On March 10, 1983, California was notified that it was subject to a disallowance of Federal financial participation resulting from the State's failure to meet the Aid to Families with Dependent Children (AFDC) payment target error rate for the October 1980 through September 1981 quality control (QC) sample period. Under the provisions of the Michel amendment, a State which failed to meet its AFDC target error rate is subject to a disallowance. Furthermore, the amendment provides that in certain limited cases, all or part of the disallowance may be waived if a State was unable to reach the target error rate but has demonstrated that it made a good faith effort. On May 18, 1983, California submitted a request for waiver and this letter is to advise you of my final decision to waive 70.25 percent of the disallowance amount. This results in a reduction of the potential disallowance from $35,067,000 to approximately $10,432,432.

The Federal regulation implementing the Michel amendment (45 CFR 205.42(g)) permits reduction of a State's disallowance "in whole or in part as we find appropriate." We believe that our standards for determining the appropriateness and amount of reduction are fair, reasonable, and ensure equal treatment for all States. Enclosed is a summary of our findings on your waiver request.

You will receive a separate letter of disallowance containing the specific amount to be disallowed and describing the process for State appeal of the disallowance decision. If you have any questions in the interim, please contact the Regional Administrator for Family Assistance.

Sincerely,

MARGARET M. HECKLER,
Secretary.

Enclosure.

EVALUATION OF AFDC GOOD FAITH WAIVER REQUEST (45 CFR 205.42(g))

STATE: CALIFORNIA

Waiver evaluation findings

California requested a waiver on the basis of a number of factors influencing its ability to meet its target error rate which affected individual counties, with supporting documentation provided by these counties pursuant to 45 CFR 205.42(g)(2)(i), (ii), (iii) or (iv) and that it timely developed and implemented a corrective action plan (CAP) reasonably designed to meet a target, pursuant to 45 CFR 205.42(g)(2)(v). While it was not clear if the State was formally requesting consideration of a waiver based on extraordinary circumstances under 45 CFR 205.42(g)(2)(i), (ii), (iii) or (iv), the above factors cited by the counties were fully weighed and evaluated as if a formal request had been made under one or more of these provisions.

States requesting a waiver based on 45 CFR 205.42(g)(2)(i), (ii), (iii) or (iv) were expected to demonstrate the following three conditions: (1) the extraordinary nature of the circumstance; (2) the extent to which the circumstance negatively affected the AFDC program and payment error rate; (3) the efforts undertaken by management to respond to the circumstance and limit its adverse impact.

With respect to the information provided by the State and the counties in this regard, we arrived at the following conclusion. The State and counties failed either to demonstrate the "extraordinary" nature of the circumstance and how it was beyond their control or they failed to provide sufficient information to establish the extent to which the circumstance negatively affected the AFDC program and payment error rate during the review period. The State and counties also did not provide sufficient information about management's efforts to respond to the circumstance. In many instances, one or more of the three conditions mentioned in the paragraph above were not even discussed. We, therefore, could not consider these factors as a basis for granting a waiver pursuant to 45 CFR 205.42(g)(2)(i), (ii), (iii) or (iv).

States requesting a waiver on the basis of a timely developed and implemented corrective action plan reasonably designed to meet the target error rate were evaluated with respect to the factors outlined in 45 CFR 205.42(g)(2)(v)(A–D) and the "Weights and Factors" scoring instrument which was sent to you on March 10, 1983. California received a total weighted score of 70.25 (of a possible 100). The following summary of our findings is organized according to the format of the weights and factors. (See attachment.) The information provided with respect to the factors cited above was also considered as to its significance to the State's request for a waiver on the basis of its good faith effort to timely develop and implement a corrective action plan reasonably designed to meet its target error rate, pursuant to 45 CFR 205.42(g)(2)(v).

California received a weighted score of 20.10 (of a possible 30) for its efforts in demonstrating commitment of top management to the error reduction program. The Department of Social Services (DSS) Manual (Chapter 15), the State law which provided performance standards and county sanctions, the renewed emphasis on corrective action and the implementation of the wage match all pointed to management's commitment. Additionally, efforts were made to improve the quality of QC reviews. QC and corrective action responsibilities were appropriately assigned and counties were held accountable by law to the State for error reduction based on valid QC samples developed for the 35 largest counties. Finally, the State began major initiatives during this period, including the Statewide Public Assistance Network (SPAN), the Franchise Tax Board Asset Clearance Match, and county systems (Welfare Case Management Information System-WCMIS and Case Data System-CDS) which were beneficial in reducing errors. On the other hand, problems continued to exist in the timelessness and quality of QC reviews despite recommendations by the Office of Family Assistance (OFA) Regional Office. An addendum to the FY 1981 CAPs was timely but the CAPs themselves were seven and eight months late. WIN and enumeration errors were excluded from county sanctions although these were the third and seventh highest error elements and eventually county sanctions were waived altogether. While responsibility for corrective action was clear at both the State and county level, accountability for corrective action was not clear except at the Director's level. Performance standards were documented at the county level but not at the State level.

California received a weighted score of 17.40 (of a possible 20) for its efforts in demonstrating the sufficiency and quality of its systems designed to reduce errors. The State provided counties with data from a number of sources; however, the Beneficiary and Earnings Data Exchange (BENDEX), the one major system available to

the State, was not utilized. Systems resources were made available to individuals responsible for corrective action. Local monitoring systems were used by some counties to analyze QC data. QC reports, the Management Information System (MIS) and other data were sent to responsible staff and training on new systems was provided. Most of the existing systems (and alternatives under study) were designed to reduce errors but the State Error Case Determination Studies indicated some utilization problems because of the timing and format of the data transmitted. However, most of the State-designed systems were manual, requiring worker-initiated inquiries and the use of multiple forms. For a State the size of California, more computer-based information should have been directly provided.

California received a weighted score of 17.75 (of a possible 25) for its efforts in demonstrating its use of systems and procedures for statistical and program analysis of QC and related data. State QC forms were complete and timely with the exception of the October 1980–March 1981 tables, which were one month late. The State sample was analyzed by error elements and the augmented sample was a major effort. Narrative explanations of QC data analysis were appropriately sent to program analysts. However, State level program analysis was limited to systems-related actions. Although referenced throughout, no documentation was presented to substantiate any other program analysis. Moreover, county level analysis was not uniformly well done and in some cases was non-existent. No State concern for this problem was evident except for material in the error-cause determination studies which were limited in scope and followed a prescribed format. The State's analyses of trends and identification of nature/sources of errors were adequate, but analysis of Federal rereviews was not really considered for corrective action purposes. Error element number one—deprivation—should have been separated into its various factors (e.g., absence, incapacity, etc.). The augmented sample, with its county breakdowns, was a major effort, but there should have been more of a State role in setting standards. In general, the State failed to adequately involve itself in the area of statistical analysis with the result that some large counties with significant errors did not complete adequate analyses.

California received a weighted score of 15 (of a possible 25) for its efforts in demonstrating its management and execution of the corrective action process. The State's assessment of corrective actions addressed all but two of the major error elements. Some targets and milestones were established by the State for systems-related actions while some, but not most, counties established their own targets or milestones. This inconsistent and limited establishment of target dates and milestones is a significant shortcoming in a State as large as California. Staff were allocated for both State and county corrective action planning but there was insufficient documentation to support that resources were allocated for actual implementation. Monitoring occurred informally during the normal course of work and through State presence on county panels. Although some credit was given for a general evaluation of QC data, no documentation of specific evaluations of corrective actions was presented. County evaluations were irregularly reported to the State. A State as large as California, which depends on counties for the implementation of many corrective actions, should have had a more formal monitoring and evaluation process and better State/county coordination. As a result, only about half of the corrective actions in the CAPs were actually implemented.

Attachment.

CALIFORNIA WEIGHTS AND FACTORS GOOD FAITH EVALUATION (1ST MICHEL PERIOD)

	Value maximum	Scores
A. Demonstrated Commitment by Top Management (45 CFR 205.42(g)(2)(v)(A))	100	67
1. Demonstrated commitment to error reduction program	50	25
Corrective action goals enunciated in agency policy (e.g., policy statements, directives, memoranda(P)		
Efforts by top management to assure timeliness and quality of State QC reviews(P)		
Implementation of federally mandated error reduction activities (Note: Wage match (45 CFR 205.56) is the only required activity for 1st Michel period)(P)		
Timely submission of the corrective action plans for this period(P)		
Access by State staff responsible for corrective action to top management		
Acquisition by top management of additional resources, as identified in CAP (e.g. computer, computer time, additional staffing)		
Other indicators as presented by the State		
2. Demonstrated management accountability for the corrective action process	30	22

CALIFORNIA WEIGHTS AND FACTORS GOOD FAITH EVALUATION (1ST MICHEL PERIOD)—Continued

	Value maximum	Score
Accountability for decisions in the corrective action process(P)		
Quality control and corrective action responsibilities delegated or assigned to appropriate level of managers or management components(P)		
Performance standards for managers reflective of their accountability for error reduction		
Other indicators presented by the State		
3. Initiatives (not specifically addressed by other elements) undertaken by the State to improve the corrective action process	20	20
Manual/automated systems which will address error concentrations but which are not operational during the period, but are under development during the period		
Comprehensive training activities		
Changes in case management aimed at improving the corrective action process		
Reorganization of agency or components		
Policy or procedure manual revisions designed to reduce errors		
Legislation enacted which is responsive to State problems in corrective action		
Other indicators presented by the State		
B. Sufficiency and Quality of Systems Designed to Reduce Errors (45 CFR 205.42(g)(2)(v)(B))	100	87
1. Use of data	20	17
Use of available source data (e.g., BENDEX, IDEX, Motor Vehicle Match), as appropriate (P)		
Other indicators presented by the State		
2. Sufficiency and quality of manual/automated systems to reduce errors based on needs indicated by program analysis	45	40
Systems resources (e.g., staff time, hardware) accessible to individuals responsible for corrective actions (P)		
Systems in place evaluated as potential corrective action tool (e.g., management information systems)		
Consideration of alternatives to current system (e.g., assignment of support law, enumeration agreement)		
Other indicators presented by the State (e.g., monthly reporting, retrospective budgeting, local agency monitoring systems)		
3. System utilization	35	30
Systems output/results sent to responsible officials (e.g., reports, tapes)(P)		
Output results related to corrective action utilized by responsible staff		
Training in use of output provided to users		
Other indicators presented by the State		
C. Use of Systems and Procedures for Statistical and Program Analysis of QC and Related Data (45 CFR 205.42(g)(2)(v)(C))	100	71
1. QC data submission	20	19
Required QC forms submitted complete and timely (form SSA 4341, tables 1, 2, 3, 3A and 4 or equivalent)		
2. Statistical analysis	35	27
Analysis of State QC sample by error elements(P)		
Analysis of Federal rereview findings(P)		
Trend analysis		
Nature/sources of errors		
Geographic breakdown		
Error prone profiles		
Statistical tests/significance of errors		
Special studies		
Interim reports		
Augmented samples		
Targeted studies		
Other indicators presented by the State		
3. Description of data	10	10
Narrative explanation of QC data analysis as transmitted to those responsible for program analysis		
4. Program Analysis	35	15
Analysis of program operations to determine cause of QC errors		
D. Management and Execution of Corrective Action Process (45 CFR 205.42(g)(2)(v)(D))	100	60
1. Assessment of corrective actions	15	10
Corrective actions developed for all error elements which represent a significant percentage of the payment error rate with a connection between corrective actions selected and errors(P)		
Other indicators presented by the State		

CALIFORNIA WEIGHTS AND FACTORS GOOD FAITH EVALUATION (1ST MICHEL PERIOD)—Continued

	Value maximum	Scores
2. Corrective action planning	25	15
Establishment of milestones(P)		
Allocation of resources(P)		
Assessment of costs and benefits		
Pilot projects		
Involvement of county or local agency staff, as appropriate		
Other indicators presented by the State		
3. Implementation of corrective action plan	45	30
Implementation monitoring(P)		
Achievement of milestones/implementation of corrective action tasks(P)		
Ongoing process for amending or discontinuing of corrective actions, as necessary		
Other indicators presented by the State		
4. Evaluation of Corrective Actions and Their Implementation	15	5
Actions evaluated based on reported error reduction, actual costs and benefits, and related indirect outcomes		

Note.—Weighting: Factor A subscore 67 × .30 = 20.10; factor B subscore 87 × .20 = 17.40; factor C subscore 71 × .25 = 17.75; factor D subscore 60 × .25 = 15.00; Score = 70.25. 1. (P) denotes a "primary" indicator of an element (see covering letter for specific information regarding these indicators). 2. Several elements do not have separate indicators listed. The documentation supporting the waiver request must fully address an element without indicators before the maximum points for that element can be assigned.

Mr. MATSUI. Second, I would like to go into the whole issue of legal risk. That is a very important aspect of your decision-making processes, because again States are relying upon HHS and the criteria they are using. And I do notice in your testimony, in Mr. O'Shaughnessy's testimony, the words "legal risk" were used quite a bit. And one of the reasons you did not grant waivers to 11 States was because of the potential legal risk that seemed to make all the difference in terms of where you were going to take the criteria.

And it is my understanding—and correct me if I am wrong. You weighted the corrective action plan by number according to different criteria; and then there was the actual performance standard. And it was my understanding that there was an agreement at HHS that both of those variables should be taken into consideration when the decision as to whether to waive or not was made.

However, somewhere along the line in that process, through the issue of legal risk, it was decided that even if the corrective action plan was over 80 percent, you would make paramount the actual performance. So that is why five States which had over 80 percent in their corrective action plan were knocked off and did not receive waivers.

Is my understanding correct?

Ms. Ross. Mr. Matsui, you are correct that the Department—the Secretary—did consider the States' actual performance in making her final decision. The scores from the corrective action plan waiver request were considered, as well as the performance indicators which I explained in April. In fact, she looked at two criteria: whether or not the State had a reduction or increase from the fiscal year 1980 error rate to the fiscal year 1981 rate; and how close the State came to meeting its target, or how far in excess of the target the State was.

Mr. MATSUI. So my statement was correct?

Ms. Ross. There was a lot in the statement. That part was correct.

Mr. MATSUI. How did you arrive at the decision to emphasize the actual performance in some cases where the States had a corrective action performance ranking of 80 percent or higher? Why was it that States that did receive corrective action plan ratings of 80 or higher end up in many cases not receiving the waiver?

Ms. Ross. As we explained at the last hearing, the OMB legal staff and the Justice Department legal staff were involved in the discussions with us in terms of the litigation risks. The fact is, that the Justice Department was extremely concerned when they saw that the scores on the corrective action plan requirements were high for some States which did not have what would be considered a good performance in terms of coming close to meeting the target error rate or even having a reduction, or maintaining the same or not more than a very small increase in their error rate from fiscal year 1980 to 1981.

So, the Department maintained that the corrective action plan scoring should be the primary basis for making the decision. It should be the basis, or at least the primary basis, for making the decision on granting waiver requests. During the course of these discussions, the Justice Department continued to make the case that they felt, for example, a State that did not score well on the corrective action plan, but had a good performance such as coming very close to meeting its target error rate or having some reduction from 1980 to 1981—would have a better opportunity to invalidate the findings in potential litigation.

So, during the course of the process, we deferred to the opinion of the Justice Department attorneys, and the Secretary decided that, yes, in fact she would use the performance indicators in making her decision.

Mr. MATSUI. Some States that had 80 percent or higher but whose actual performance on the target error rate did not do too well, they were knocked off?

Ms. Ross. That is correct. That is a key point, because, in making the fiscal year 1981 decisions, the Secretary used the performance indicators as disqualifiers as opposed to qualifiers.

I could go through each of those States, if you would be interested.

Mr. MATSUI. Eleven States were originally recommended to receive waivers; is that correct?

Ms. Ross. That is not exactly accurate. Eleven States scored above 80 on their corrective action plan processes.

Mr. MATSUI. Within your department, there was a consensus that 11 States should receive a waiver?

Ms. Ross. That is not correct, Mr. Matsui. There was consensus in the Department—and I am trying to be as clear as possible—that the corrective action plan score, the waiver request score, should be the primary basis for making the decision.

It is important to point out that it was not simply a situation where we would discuss one particular facet and then move on to the next. The discussions were very fluid, and a number of issues were raised at the same time. I am sure you can appreciate the kind of dialog that goes on during discussions and deliberations of that sort.

So it was not a matter of making a particular decision at any point in time—or a preliminary decision, as you suggest, that 11 States should be granted waivers—but, rather, that corrective action plan scores should be the primary basis, and other factors were being considered at the same time.

In making the final determination, the Secretary decided to use the performance indicators.

Mr. MATSUI. Mr. Terry Coleman, your legal counsel, is he your chief legal counsel?

Ms. Ross. Acting General Counsel.

Mr. MATSUI. Top lawyer in the department?

Ms. Ross. Currently, that is right.

Mr. MATSUI. I understand that he submitted a memorandum that discusses the issue of good faith and what should be the components of good faith, the corrective action plan, and also the actual performance.

Ms. Ross. Mr. Coleman did prepare a discussion paper that he transmitted to the OMB legal staff and to the Justice Department legal staff. That was not a paper that I saw during the course of deliberation, nor was it used for any discussions in my presence or by the other people who were involved in giving the Secretary information on making the decision. That was, rather, a discussion paper for the lawyers to use.

Mr. MATSUI. It is my understanding that that document was sent to Justice and OMB after February 8, 1985 when Mr. O'Shaughnessy sent Mr. Cogan his letter that includes the word "decision" in it.

Ms. Ross. That is correct. It was after February 8. I do not know the exact date.

Mr. MATSUI. In other words, there was a lot of discussion as to what the criteria would be. And, as you said, in April there was discussion about legal risk. And, as a result of that discussion—well, among other things—this memorandum was drafted by Mr. Coleman.

Are you familiar with the contents of this memo at this time?

Ms. Ross. I have read it. I read it when it was released to the subcommittee, which was the first time I saw it. And it was my understanding that there was a meeting yesterday where Mr. Coleman attempted to clarify some of the questions the subcommittee had at that time.

Mr. MATSUI. Without objection, I intend to make this document a part of the record.

Ms. Ross. I would have to say, on behalf of the Department, that in fact we would object, and we would request—--

Mr. MATSUI. I understand you would object.

Ms. Ross [continuing]. That you not make it a part of the record.

Mr. CAMPBELL. Would the gentleman yield?

Mr. MATSUI. Yes.

Mr. CAMPBELL. I would have some concern with trying to put too much weight on this document which came after the fact by acting legal counsel, not the gentleman that we had before the committee. I understand the gentleman from California wished to have another witness, and I hope that that would work out in the future.

But, rather than to go into the legal implications of a document that was filed by someone else with Commissioner Ross, I just wanted to make sure that the record reflected that, No. 1, she did not draft this, and No. 2, it was after the fact. And, it was something that she saw at the time that most everyone else did. And, I am not so sure that she is a qualified witness to deal with it in legal detail.

Mr. MATSUI. Well, will the gentleman yield back?

Mr. CAMPBELL. Yes, sir.

Mr. MATSUI. I certainly respect the gentleman's opinion. I am not holding the witness here to whatever is said in this document. I realize you had not seen this document prior to the time when it was submitted to this subcommittee. So certainly I am not suggesting that you are bound by what is said in here, and I never intended for that to occur when I submitted this document for the record.

I submit it for the record mainly because in the legislative history of my legislation, I am trying to demonstrate—and I think only history will make this determination on the floor of the House—but I am trying to demonstrate that there is a lot of confusion out there as to exactly what standards the States have to comply with in order to get these waivers. And that is why it is so important for us to have this legislation. We must put it down in legislative language so it is clear and unmistakeable, so the 50 States will no longer have this uncertainty some 4 years after the fact.

I have a few questions now, because you do discuss the issue, about legal risk and the concern you had that the courts might invalidate the criteria. That was a discussion you and Mr. O'Shaughnessy emphasized on April 25.

Is that correct?

Ms. ROSS. It is correct, the majority of the discussions centered around the litigation risks.

Mr. MATSUI. Right. And that was raised in response to my question at that time whether this decision was made for budgetary reasons, and you denied that. You said it was because of the legal concerns; correct?

Ms. ROSS. Correct.

Mr. MATSUI. This is the top legal guy in the Department of HHS?

Ms. ROSS. Yes, Mr. Coleman currently is.

Mr. MATSUI. All right. OK.

He says that—and I am going to quote this, and maybe you can give me a response. You have read this document, so you do understand it. I am quoting from the third paragraph.

It says that "the correlation as a basis for change, for the same reason that the imperfect correlation should not result in judicial invalidation of the corrective action plan criteria, it would not seem possible to rely on the correlation as a basis for the department's abandoning the corrective action plan criteria in deciding the 1981 waivers.

"If we wanted to attempt this approach, we could not use the first or third argument stated above"—and you read the document, so you know what those are—"since a statutory violation argument"—that is, the legal risk problem—"cannot reasonably be made, and a defective scoring system would imply the need only for a rescoring, not abandoning the whole approach."

I have to emphasize the phrase "since a statutory violation argument cannot reasonably be made." It seems to me that your top legal counsel at HHS says that it is pretty hard to say that there was a legal risk involved in the criteria you submitted to OMB.

I realize you have not seen that document, but did somebody in the department who is a lawyer with more authority than Mr. Coleman say that there was a legal risk involved in the criteria?

Ms. Ross. I saw that document just last week, in fact. The fact of the matter is, as I indicated earlier this morning in my testimony, the Department did hold firm. The Department's attorneys, as well as others of us in the Department who were involved in the discussions, did hold firm in our belief that the corrective action scoring should be the primary basis for making the decision on the fiscal year 1981 waivers.

We did not view this as a serious litigation risk, that is, we did not view using our scoring as a serious litigation risk. That was and is the opinion of our attorneys at HHS, as well as others of us at HHS. The memo you have there was written by our lawyers to set forth the arguments that could be made to rebut any charges made by States that did not obtain waivers.

In weighing the relative risks, however, the Justice Department remained firmly of the view that ignoring poor performance would create a significant litigation risk, as I indicated earlier. The Justice Department felt very strongly about that.

Mr. MATSUI. This is Justice speaking, not HHS?

Ms. Ross. Right.

Therefore, we deferred to their judgment and decided to take performance into account where it contradicted the indication of a good faith effort. It was suggested——

Mr. MATSUI. Are you reading from a document there?

Ms. Ross. From a statement by legal counsel.

Mr. MATSUI. Did Justice ever submit to you a legal document saying that there was a legal risk in not considering the performance criteria?

Ms. Ross. To my knowledge, they did not. And I was at several meetings where the Justice Department attorney was present with the HHS attorney and, to my knowledge, there was not a formal legal opinion.

However, I did hear the Justice Department attorney express that opinion a number of times. There were some deliberations that took place solely between the lawyers from OMB, HHS, and the Justice Department in which I was not involved.

Mr. MATSUI. So I understand, as far as you know there has been no written documents from the Justice Department lawyers rebutting Mr. Coleman's opinion that I have just recited?

Ms. Ross. That document was not a formal opinion by Mr. Coleman, but rather, was a paper written for discussion purposes to be used between him and the other lawyers.

Mr. MATSUI. He did not cite any cases—and I am a lawyer and it looks lawyer-like to me. I understand.

What about OMB? Did their lawyers submit any written documents to you regarding why they thought there was a substantial risk, a legal risk involved in the criteria?

Ms. Ross. That is not the case. OMB did not submit written legal documents. I was at meetings where the OMB legal staff was there with the HHS General Counsel and the Justice Department, and there were no documents transmitted in my presence, or any that I am aware of.

Mr. MATSUI. There was only one document submitted by Terry Coleman—none by Justice or OMB—although this was a matter of debate within the Department of HHS; is that correct?

Ms. Ross. That is a correct assessment. That document is not a formal legal opinion from our General Counsel, but merely a discussion paper for his use in talking with the other lawyers.

Mr. MATSUI. OK.

Mr. O'Shaughnessy is not available today?

Ms. Ross. There was a meeting held yesterday with Mr. O'Shaughnessy and other members of the Department, including our General Counsel as well as members of your staff. It is my understanding that issues were resolved at that meeting, including issues involving this memo. And Mr. O'Shaughnessy——

Mr. MATSUI. That is not my understanding.

OK, I have no questions.

Mr. Campbell.

Mr. CAMPBELL. We are not dealing with a legal opinion here in any way, shape or form, are we?

Ms. Ross. It is not an official legal opinion of the Department. It is a discussion paper.

Mr. CAMPBELL. It was not presented as a legal opinion; and in no way was it given to you as an opinion that you can reference on any decision, but merely an after-the-fact discussion paper?

Ms. Ross. That is absolutely the case. The paper itself was never used in any discussions at meetings that I attended.

Mr. CAMPBELL. For legal counsel, you relied on the Justice Department—the verbal discussion and opinion given to you—that you would have to take into effect, because of the possibility of litigation, the success of a plan that was operating?

Ms. Ross. That is correct.

Mr. CAMPBELL. That came closer to being any legal advice on which you based decisions?

Ms. Ross. Yes. It was the oral opinions and advice given to us by the Justice Department.

Mr. CAMPBELL. Now, in the criteria that you have outlined for a good faith effort—it is possible to draft a plan and have a good faith effort and accomplish nothing, isn't it?

Ms. Ross. I am sorry, Mr. Campbell?

Mr. CAMPBELL. It is possible to have a plan and assert a good faith effort and accomplish nothing?

Ms. Ross. Well, I am not sure that I could entirely agree with that. It is possible to have a plan and accomplish nothing, because one could have a plan and not implement it.

Mr. CAMPBELL. Good faith on writing a plan if you didn't implement it?

Ms. Ross. You could attempt to do that. We would hope the review process would not allow that. But, yes, it could be attempted.

Mr. CAMPBELL. According to Justice and your meeting, you have to look at some results along with the fact that a State put it all down on paper and claimed to have implemented it?

Ms. Ross. That is correct.

Mr. CAMPBELL. Do you also have to look at the different types of errors? For instance, an agency error obviously would be easier to clean up than, say, a client-type error. Is there any weight given there to the types of errors?

Ms. Ross. In terms of the types of errors?

Mr. CAMPBELL. Types of errors, yes, ma'am.

Ms. Ross. I am not sure that I understand your question.

Mr. CAMPBELL. Well, if you have an error—and we are talking about error rates——

Ms. Ross. Yes.

Mr. CAMPBELL [continuing]. And we find that the errors are being caused by the people administering the program instead of the people that are recipients, then isn't one a client error and one is an agency error?

Ms. Ross. Yes, that is right. I am beginning to understand what you are asking now. Agency errors are easier for the agency to correct, clearly. Obviously, one of the things we would look for in terms of determining whether a State was undertaking effective and targeted corrective action activities would be the kinds of errors they had, whether they were agency-caused and whether the agency was taking sufficient steps to bring that type of error under control, because it has a greater possibility of doing that in some cases.

Mr. CAMPBELL. A State could claim a good faith effort in cleaning things up and clean up the easiest kind of error, and not make the total good faith effort in the client errors.

Is that possible?

Ms. Ross. Generally speaking, nationally, agency and client errors are usually about 50-50—it varies back and forth from year to year—so it is conceivable that a State could deal with all agency-caused errors and, in fact, try to make a case for a good faith effort on that basis.

Mr. CAMPBELL. You would take into consideration in your criteria the types of errors; is that right?

Ms. Ross. We looked at what caused the errors and the kinds of errors that States had to deal with.

Mr. CAMPBELL. Let me ask you a couple of other questions, on H.R. 1279, the proposed legislation.

I would like you to elaborate if you would on the significance of the so-called technical error exclusion. I would like to know whether in your opinion is technical error a minor thing, or a substantial type of loophole that we would be opening here?

Ms. Ross. You make a very good point. What we sometimes refer to as technical errors are actually substantive errors, and the Department takes the position that these are not merely technical errors.

The things which are commonly referred to as technical errors are basic eligibility conditions as stated in the statute. For example, the assignment of child support, WIN registration, having a

Social Security number, and so forth are what are normally referred to as technical errors.

Mr. CAMPBELL. Well, now, if it were a technical error and you didn't have a cross-check and social security number, then you would have no real way of verification in some instances, is that right?

Ms. Ross. That is the case precisely, and in fact, I am sure that was one of Congress' intents in requiring a Social Security number as a condition of eligibility. In light of the new requirements that will be taking effect in the near future, it is absolutely incumbent on the State to have a Social Security number to do the kind of data matches which will be required. For example, if you had the Social Security number and did a match of some sort, you might discover excess resources or you might discover unreported, unearned income that would have made the payment lower or in fact, may have made the person totally ineligible to receive a payment.

Mr. CAMPBELL. Really. Since we handled child support legislation before, and we felt very strongly about people that didn't support their children, you could conceivably say that if a client refused to cooperate with the child support enforcement activities, that this would be called a technical error and that, in fact, you would almost negate some of the child support enforcement activities if you waived these technical errors?

Ms. Ross. That would be an effect, yes.

Mr. CAMPBELL. Work against what this committee has already done?

Ms. Ross. I believe so, Mr. Campbell.

Mr. CAMPBELL. I just hate to see that happen. You mentioned a study a while ago, the study, so forth, I wonder if you would go back and elaborate a little bit, please, what they have said about the control of error rates, and some of the recommendations that they have made?

Ms. Ross. The Touche Ross study was significant in that it addressed some very important questions—the effects of specific corrective actions on each of the five major error elements, the specific implementation activities, and the relationship between the costs and the effectiveness of specific actions.

So, for the first time, we have direct cost-effectiveness data for specific corrective actions designed to bring down the error rate and to target specific kinds of errors.

The study findings provide some very important insights for those of us who are working on bringing the error rate down and improving corrective action.

There are many State and local practices which appear to minimize AFDC payment errors, and those practices fall into three broad categories: verifying client information, the accuracy and consistency of the action that the eligibility worker takes, and finally, top management commitment, which is extremely important and one of the important factors we used in evaluating State corrective actions.

Mr. CAMPBELL. Top management commitment, is that the directors of the programs, or the administration in the State, from the Governor linked to the directors? Or is that the attitude of the State or the people out in the agency?

Ms. Ross. Largely the people who administer the program, but if the Governor is involved, that would be the utmost in top management commitment. In the Touche Ross study, all of these types of top management commitment activities identified were low-cost.

Touche Ross broke out the cost of specific corrective actions in terms of low, $20,000 or less, medium, $200,000 or less; or high, and most of the actions that they identified were in the low-cost category. I think it is important to point out that these corrective actions came from a survey of 23 States based upon what States were doing. The data is very timely. The review of the corrective action plans that they looked at covered fiscal years 1979 to 1982, and the survey of the States' actual practices covered the period from fiscal year 1979 to the latest fiscal year. So it is current data and reflects as close to a state-of-the-art assessment of the situation as we could get.

They also indicated to us that probably one of the concerns States would express is that they are already doing a lot in the field of corrective action, and I think that is true. But the Touche Ross study suggests there are additional things States can do. Sometimes when the State has set a policy of doing a particular error reduction technique, when it reaches the local level something gets lost in translation, and without effective follow-up, the policy itself may not be implemented the way that the State would have desired and as written up in the corrective plan.

The study made important findings in discovering more effective uses of particular techniques. For example, supervisory review of eligibility workers was found to be extremely important—not necessarily 100 percent review by the supervisor, but rather targeted and selective review. We consider this sort of finding in the study to be very important.

Mr. CAMPBELL. All of these things you have outlined here are within the power of the State to implement, and have been identified as things they think the State could and should do?

Ms. Ross. Yes, sir, at least one State is doing each of the activities because they came from the survey of 23 States that Touche Ross did to get the data for the study.

Mr. CAMPBELL. You mentioned in your earlier testimony that in 1973, we had a 16.5-percent error rate at that time.

Ms. Ross. Correct.

Mr. CAMPBELL. What are we talking about in dollars, in taxpayers' dollars with a 16.5-percent error rate, do you know?

Ms. Ross. I don't have the exact figures. I addressed that issue in my April testimony. Had the error rate continued at the 16.5-percent level, we would be talking about $2 billion as opposed to $1 billion spent in erroneous payments.

We will check that and provide the exact figure for the record.

[The information follows:]

For FY 1981, if the error rate had remained at 16.5%, approximately $2.1 billion would have been paid erroneously. As a result of the reduced error rate, approximately $1.0 billion was paid erroneously; a savings of approximately $1.1 billion. The Federal share of this savings is approximately $600 million and the State share is approximately $500 million.

Mr. CAMPBELL. Let me ask you another question. Tell us how many States met the 4-percent error rate target for each of the

years 1981, 1982, and 1983? Is there any trend, or did some States make it 1 year, not the next?

Ms. Ross. The trend is that more and more States will meet the 4-percent target rate. In 1981, three States met it, and in 1982, 10 States. So we see a definite trend.

Mr. CAMPBELL. The trend is toward meeting the target. Is there any problem? Is there any trend in the type of State that is meeting the error rate target, small States, small client caseloads? I wonder if there is any particular type of State that seems to have better luck in meeting the targets than others?

Ms. Ross. Three States had error rates of less than 4 percent for fiscal year 1981. My staff has other charts, but for fiscal year 1981, Nevada, North Dakota, Virginia, and there were seven other States which were under 4 percent for the second 6-month period: Indiana, Montana, South Dakota, Utah, and the others I have already mentioned.

For fiscal year 1982, the States that were under 4 percent were Indiana, Kansas, Kentucky, Minnesota, Montana, Nevada, North Carolina, North Dakota, Oklahoma, South Dakota; and for 1983, Alabama, Idaho, Iowa, Kentucky, Minnesota, Mississippi, Missouri, Montana, Nevada, North Carolina, North and South Dakota, Virginia, and West Virginia.

It is all over the country.

Mr. CAMPBELL. I heard four or five or six that made it all the time, and the others kind of in and out, so there is not really a pattern there. Someone says, OK, I have got a small State and therefore, we don't have as big a sample, and we can't make it, but you had a lot of small States and again, you have larger States that you mention.

Do you think that the criteria, and you answered this, but I want to discuss it a little bit more, do you think that the criteria as they are now set is too stringent?

Ms. Ross. The 4 percent and 3 percent?

Mr. CAMPBELL. The 3 percent that we are going to, that we have moved to.

Ms. Ross. Mr. Campbell, I believe that the 3 percent limit is a reasonable limit. First of all, as I indicated, States are making progress in reducing their errors.

Mr. CAMPBELL. I am speaking more beyond the 4 or the 3 criteria, instead of criterion, I don't want to use it that way, because you do have rules, and I look at the whole package. Taking into consideration what you have outlined as the criteria that you used in granting waivers or judging efforts, I would have to assume that you would continue to take that sort of thing into consideration, as you reached a point whether you did or did not grant a waiver, and therefore, it should be in the total package.

So I would like for you to address not just the 4 to the 3, but whether the other criteria need to be looked at.

Ms. Ross. Meaning the——

Mr. CAMPBELL. That you might use to grant waivers, or that you might use not to take sanctions against the State?

Ms. Ross. In fact, as I indicated, we are anticipating issuing a Notice of Proposed Rulemaking to change the criteria and make more explicit the conditions under which States could apply for a

good-faith waiver. That change in regulation was a decision made by the Secretary, as indicated, on the basis of her first-year review.

The regulation will include performance indicators, stated explicitly, which will be the kinds of things that she took into consideration in making the fiscal year 1981 decision.

Specifically, States will be able to apply for a good-faith waiver if they meet a threshold of performance—that is, if they do not exceed their target error rates by more than 10 percent, they would be eligible to apply for a good-faith waiver on the basis of error reduction activities.

Mr. CAMPBELL. When a State claims that the data base is too small, and they do not think that it gives them a true reading, do they have the authority to broaden that data base, take more samples, to deal with that problem themselves?

Ms. ROSS. Yes, they do. We have established Federal, sample minimums, or numbers of sample cases that we require States to do.

However, we do not have a maximum limit, and we match 50 percent of the cost, if a State should choose to increase its sample.

I would like to point out that after the TEFRA regulations were issued last September, we also allowed States to reduce the size of their samples if they wanted to, and in fact, eight States have decided to do that.

It would work the other way, too. We do not allow States to go below the required Federal minimums when they reduce their sample size, but we would allow them to increase their sample sizes.

Mr. CAMPBELL. In taking a sample, where do you judge within the confidence level, the center point, the outer limits of confidence level?

Ms. ROSS. We use the midpoint of the confidence interval and we use that because it is the statistically acceptable practice, and we believe it is the best.

Mr. CAMPBELL. That is what most statisticans use?

Ms. ROSS. Correct, and we believe it is in fact the best indication of what the actual error rate is.

Mr. CAMPBELL. Do you know any programs in the Federal Government where we would use the bottom end of a confidence level?

Ms. ROSS. A Federal program, no, sir, I am not aware of any.

Mr. CAMPBELL. In any area in which we collect data, and make determinations from that data, don't we always work within the middle point of the confidence level?

Ms. ROSS. I can't speak for the entire Federal Government.

Mr. CAMPBELL. To your knowledge?

Ms. ROSS. In terms of the programs like AFDC, to my knowledge, they all use the midpoint.

Mr. CAMPBELL. So, if we went to a lower level we would have a departure from what has been policy all along?

Ms. ROSS. Certainly from what has been the policy in the AFDC program, and I believe from what we would consider to be a statistically valid practice.

Mr. CAMPBELL. Well, I appreciate very much your testimony, and I would like to say that there may be some areas that we would like to look at, when the new regulations are proposed by the Sec-

retary. When would we have some idea of exactly what they are going to be?

Ms. Ross. I have outlined the specifications that the Secretary has approved to date. We don't have them in final form yet. We are working on the regulations.

Mr. CAMPBELL. I would love to see fine print along with it.

Ms. Ross. I understand that. This is to be a notice of proposed rulemaking, and by best guess is that we will have it probably within the next 4 weeks with a normal comment period.

Mr. CAMPBELL. We could expect that within the next 4 weeks, we would be able to see what changes you are proposing, of course, you have that authority—outside of dealing with the 3 or 4 percent. We don't have to go back to draft a new law.

Ms. Ross. We believe the Secretary has the latitude to clarify the criteria for a good-faith waiver, and, yes, we can do this under current law.

Mr. CAMPBELL. OK, thank you very much.

Mr. MATSUI. Thank you, Ms. Ross.

If you come up with a new criteria in 4 weeks or before that time perhaps, in order to give this subcommittee and the Congress an opportunity to think about it. Maybe you can also comply with Mr. Ford's opening comment remarks, about the 1978 request that was made of the Department of the study on quality control.

I think it might be better that the horse go before the cart. In other words, the study be done and then perhaps you can look at the criteria. Perhaps you can tell us when that study intends to be submitted to this subcommittee?

Ms. Ross. I recognize your keen interest. I know you have asked me about it during my previous two appearances. I always check to see what the status of the study is, and I was advised this week that the study will be completed in 1 month.

There is a full-time effort to get the study completed, and I checked with the people in the Department who have the responsibility for it.

Mr. MATSUI. Thank you. Let me get into this issue of a legal opinion. You said this was a discussion document, and that is fine. I don't want to quibble over definitions, however, for the record, so I understand correctly, this was written, this document that you call a discussion document, was written by your top legal attorney.

If he writes a memo about what he wants to pick up at the grocery store, milk, whatnot, that is not a legal opinion. However, a sentence from page 2, "Hence, there is no statutory violation simply because waivers are granted to States with excellent effort, but poor results" appears to be a legal opinion.

Now, it seems to me that that is a lawyer, your top legal person, your lawyer, talking about statutory violations. Now, you are saying this is a discussion document, and it is not legal advice?

Ms. Ross. I have spoken with the general counsel who wrote this document. Obviously, we knew of your concern about the document based on yesterday's meeting. The general counsel has informed me that, in fact, it was a discussion paper used by the lawyers.

I never saw it as a formal legal opinion. It was not submitted to anyone as a formal legal opinion. I can address that issue outside

of this document, if you would like to discuss that. I am not a lawyer, and as I believe you indicated earlier——

Mr. MATSUI. I am not trying to——

Ms. ROSS. It is going to be impossible for me to speak in those terms.

Mr. MATSUI. I am suggesting when a chief lawyer of your Department talks about statutory violations, it is hard to imagine this is a discussion document for his own use. I understand, the lawyer said this document was in fact drafted prior to the actual decision being made by HHS in terms of the actual criteria?

Ms. ROSS. He informed me of that also, Mr. Matsui, yes.

Mr. CAMPBELL. You were not aware of that?

Ms. ROSS. No, sir, I did not see the document until about 1 week ago.

Mr. MATSUI. He just informed you of that.

Ms. ROSS. Yes.

Mr. MATSUI. Thank you very much.

Mr. CAMPBELL. One more question.

I noticed in the transmittal letter that some requests were made for legal opinions, and in the transmittal letter from the Acting Assistant Secretary that it was stated that no formal legal opinions were prepared or furnished. The evaluation of opinions under consideration was made orally and a draft analysis of this litigation risk was furnished to OMB and Justice.

They sent a copy to us and noted that if the enclosed analyses were sought by the public or opposing parties in litigation, it would be subject to attorney-work product, and attorney-client privileges.

As I look through it, and read it, it is hard for a lawyer not to write like a lawyer, and that is exactly what this attorney did, but I still draw to the conclusion that you did, and anyone else would, that this is not a legal opinion, but a kind of an analysis. This is the same opinion that your Assistant Secretary, drew when he transmitted it, this is more an analysis of other things rather than an opinion of this lawyer himself.

I wanted to make sure about that.

Mr. MATSUI. In view of the fact you refer to this June 12 document, we ought to submit that for the record, so I will submit for the record.

[The information follows:]

DEPARTMENT OF HEALTH AND HUMAN SERVICES,
Washington, DC, June 12, 1985.

Hon. HAROLD FORD,
Chairman, Subcommittee on Public Assistance and Unemployment Compensation, Committee on Ways and Means, House of Representatives, Washington, DC.

DEAR MR. FORD: At the hearing on April 25, 1985, and in your letter of May 13, 1985, requests were made for legal opinions written during discussions between HHS, OMB, and the Justice Department on the 1981 AFDC waiver requests.

No formal legal opinions were prepared by HHS or furnished to HHS by OMB or the Justice Department. Rather, the evaluation of options under consideration was made orally among lawyers for the three agencies. A draft analysis of certain litigation risks was, however, furnished to the Justice Department and OMB, and a copy is enclosed for the use of the Committee.

If the enclosed analysis were sought by the public or by opposing parties in litigation, it would be subject to attorney-client and attorney work product privileges and

would not be disclosable. In view of this, we request that the document be kept confidential by the Committee and not be publicly disclosed.

Sincerely,

LAWRENCE J. DENARDIS.
Acting Assistant
Secretary for Legislation.

Enclosure.

The regulations implementing the Michel Amendment provisions on disallowance of certain AFDC and Medicaid costs, based on a sampling of the state's error rate, allow part or all of the disallowance to be waived for various reasons pursuant to the statutory authorization for a waiver where the state has failed to meet its target error rate despite a "good faith effort." Among the grounds specified in the regulations for a waiver is the submission of a corrective action plan meeting certain criteria. Plans submitted by states are evaluated and scored, and waivers are granted to those with the highest scores. The corrective action plan scores correlate imperfectly with the states' performance in nearing their target rates; thus, for example, Wyoming had an excellent score on its corrective action plan but fell far short of its target error rate during the first year. It has been suggested that this imperfect correlation invalidates the corrective action plan as a basis for waivers and that, consequently, no waivers should be granted at all. This memorandum examines that concern and concludes that the imperfect correlation does not pose a risk to the validity of the corrective action plan criteria and would not warrant abandoning the approach, which is presently set forth in the regulations.

RISK OF INVALIDATION

There are three possible ways in which the imperfect correlation might be said to vitiate corrective action plans as a basis for waivers. First, it might be argued that awarding a waiver to a state that missed its target rate by a wide margin is inconsistent with the statutory requirement that waivers be based on "good faith effort." Second, it could be argued that the imperfect correlation demonstrates that the criteria stated in the regulations do not successfully capture good faith effort. Third, one might contend that the scoring system implementing the regulations is defective, as evidenced by the imperfect correlation.

The first argument can be easily dismissed. There is nothing in the concept of good faith effort that necessarily requires a high correlation between effort and success. Certainly, a poor degree of success draws into question the value of the effort mounted, but it is clearly possible to make a "good faith effort" that does not succeed or even come close to success. While it is true that in individual cases a state achieving a lower error rate may have in fact demonstrated a greater "good faith effort," neither the statute mandates, nor common experience dictates, that effort and success are tied together. Under the Michel Amendment, states are only considered for a waiver when they have failed to meet the target error rate and if their failure occurs "despite a good faith effort." In continuing this good faith effort standard in TEFRA, Congress explicitly did so in recognition of "the limitations on what it is possible to accomplish even with a good faith effort aimed at full compliance." S.Rep. No. 97-494, 97th Cong., 2nd Sess. at 81 (1982). If success were the benchmark against which effort was required to be measured, there would have been no need for waivers. States that met the target error rate would be the only ones logically exhibiting the requisite amount of good faith effort. Therefore, the statute necessarily focuses more on the nature or degree of state's effort than on some measure of success or proximity to the target error rate.

Even though its "good faith effort" will allow a state to achieve a lower error rate than it would have without making such effort, the actual error rate may often reflect the effect of other factors that have a direct bearing on reducing errors. For example, if the state's error cases are concentrated in one particular county, it is much easier for the state to eliminate the cause of those errors than if the error cases occur throughout the state. Similarly, whether errors are agency or client caused also has a direct impact on the state's success in remedying them, since client caused errors are much more difficult to eliminate due to the lack of control over the recipient. Thus, in light of the different circumstances confronted by each state, it is expected that results may differ markedly from state to state even though effort may be the same, or that one state's situation allows great improvement with little effort, while another's problems are intractable in spite of great effort. Hence, there is no statutory violation simply because waivers are granted to states with excellent effort but poor result.

The next level of argument considers whether the Department's criteria in the regulations for judging corrective action plans in fact measure good faith effort. Thus, one could concede that effort need not be closely correlated with result but conclude that the criteria are measuring something other than effort, since, the argument would go, if the criteria did measure good faith effort, we would see a better correlation between effort and result. This argument is not objectively answerable since there is no way of determining what degree of effort should result in what degree of success. Once we accept the conclusion that good faith effort can result in failure, there is no objective way to determine whether our evaluation system is measuring good faith effort that results in limited success or something other than good faith effort. The Department's experts believe that the criteria stated in the regulations do successfully measure good faith effort to achieve error rate reduction, and a court would be hard-pressed to determine, based simply on a poor correlation with performance, that the criteria do not measure what they purport to.

Finally, if one concedes that the criteria in the regulations are satisfactory as indications of good faith effort, then the argument must focus on their implementation, i.e., the evaluation and scoring of corrective action plans. Here, the argument would be that the poor correlation scores and performance demonstrates the invalidity of the scoring methodology. The outcome of a legal inquiry into the adequacy of the scoring system as a measure of success in meeting the crtieria in the regulations would probably depend on expert opinion and possibly on empirical manipulation of the data. For example, if an outside expert took the position that the management factor should receive greater weight than the Department gave it, and if the correlation between effort and result dramatically improved when re-weighted in accordance with the expert's instructions, a court could conceivably conclude that the scoring system should be revised. In the absence of some such demonstrations, however, it seems unlikely that the mere fact of an imperfect correlation would persuade a court that a new scoring system was necessary to implement the criteria in the regulations.

In summary, the imperfect correlation between corrective action plan scores and nearness to the target error rates by itself does not create a substantial risk that the corrective action plan criteria will be invalidated.

THE CORRELATION AS A BASIS FOR CHANGE

For the same reasons that the imperfect correlation should not result in judicial invalidation of the corrective action plan criteria, it would not seem possible to rely on the correlation as a basis for the Department's abandoning the corrective action plan criteria in deciding 1981 waivers. If we wanted to attempt this approach, we could not use the first or third arguments stated above, since a statutory violation argument cannot reasonably be made and a defective scoring system would imply the need only for re-scoring, not abandoning the whole approach. Thus, the only possible rationale would be to conclude that the criteria stated in the regulations for evaluating corrective action plans are unreasonable as demonstrated by the correlation between plan quality and error rate reduction. This would be an extremely hazardous approach, since there is probably a great deal of Departmental correspondence, testimony before Congress, and other public statements suggesting the value of corrective action plans. To assert now, without the benefit of notice-and-comment rulemaking, that, in effect, we no longer know what constitutes an appropriate corrective action plan would invite serious legal challenge.

COMPARATIVE LITIGATION RISKS

Even if we were to assume that the correlation between plan scores and performance posed a litigation risk, that risk would have to be compared to the risks of changing the system. The risk stemming from the imperfect correlation, if present at all, is quite low because the logical remedies resulting from a successful challenge would probably not be useful to the litigating states.

A state that did not obtain a waiver could not simply point to the correlation and argue from that fact that it deserved a waiver. The only relief it could logically seek would be invalidation of the criteria for evaluating corrective action plans. States, however, are not likely to benefit from a court decision invalidating the criteria. Invalidation could not directly result in judicial substitution of different criteria for evaluating corrective action plans but at most a remand to the Department for additional action consistent with the court's decision. Upon remand, the Department could presumably decide against the entire corrective action plan approach, unless otherwise constrained by the court. A state would ultimately benefit only if it could invalidate the current criteria, secure a holding that waivers must be allowed for

corrective action plan efforts, and obtain new criteria that would benefit the state more than the current criteria. Absent all of these results, there is no benefit to a state, except possibly delay, from seeking to invalidate the corrective action plan criteria on the basis of the imperfect correlation. Thus, this is not likely to be a primary state strategy nor a particularly important litigation risk.

By contrast, the litigation risk would be high if there is a remedy clearly beneficial to the states that will result if a particular line of argument prevails. Accordingly, we can expect serious challenge to the amount of the basic disallowance, since states will be seeking to lower the amounts. Similarly, there may be an attempt to argue that cut-off score for corrective action plan waivers should be lower, or that particular plans should be scored higher, since in those cases qualification for a waiver would clearly be at issue.

These considerations illustrate the risks of modifying the evaluation criteria in any manner that poses the risk of procedural error. For example, if we were to grant waivers to plans with a score of 85 for states that came within 10 percent of their target rates, there would be a substantial incentive for states with scores of 85, but outside the 10-percent cut-off, to challenge use of the cut-off. Any substitution of new criteria for the existing criteria would create a clear remedy for states to seek, if they believe they would achieve a better outcome under the previous criteria. This is a situation of much more concern than a general challenge to the waiver criteria, for which success would bring no clear relief to the states.

In short, since the imperfect correlation between effort and results (1) is defensible and (2) is not likely to be a major point of the litigation in any event, it would not be prudent to revise the waiver criteria in an effort to deal with the issue. Such action would only create the specter of procedural error and invite states to argue that the Department should be required to use the current criteria, rather than whatever the new criteria would be. If a court were to invalidate new criteria and compel us to use the present standards, it might be much more difficult to reach the desired result of limited waivers since at that point the court might perceive restrictive standards as an attempt to thwart its decision.

Mr. MATSUI. There is an inconsistency in the paragraphs, no formal legal opinions were prepared, and he also says this document would be subject to the attorney-client privilege, and the attorney-work product privileges, so I am assuming it has some legal basis.

I am a lawyer. But as a legislator, I shouldn't act like a lawyer, because there are lawyers around who could certainly advise this subcommittee and me on how to interpret this document. So I am not going to get into the interpretation of this document.

The courts at the right time will be able to interpret this document when they get Mr. Coleman before the judge and ask him what he meant.

Mr. CAMPBELL. A request was made, and you already introduced the document itself and ignored the original request from the Acting Secretary, who was trying to comply with us. That is the reason we ought to refer to it and put the other part in the record.

They did not consider it as a complete or valid legal opinion, but rather in fact, just an analysis of other things by their lawyer.

I wanted to make sure that we did not put too much emphasis on this as the opinion on which they were basing their decisions.

Mr. MATSUI. The only reason I submitted this, as I said in my opening remarks, I want to point out for the legislative history of my legislation, that when the States, submitted their documents seeking a waiver, the HHS Department didn't even know what the criteria was going to be. That is the important aspect of this hearing.

I am not concerned what may occur in litigation later on. That is for the States and for the Department and the judge to utlimately decide, but we have to decide this legislation. I think there are a

lot of States out there right now who don't know what the criteria of the Department is, because the Department is being motivated by budget decisions and not by decisions based upon the law promulgated by Mr. Michel in the Michel amendment.

Mr. CAMPBELL. Mr. Matsui, I certainly hope that they are motivated by the decisions of fiscal responsibility. I would hate to think that any agency of government might not be, though I have had questions about a few, as I am sure you have.

I would hope that they are motivated from that standpoint of fiscal responsibility, since we all work for the taxpayers, and I would not find any problem if that were their motivation.

I don't think they are motivated from a standpoint, though, and I don't think you allege this, of somebody saying you have to cut so much out of your budget by doing this, this, and this.

Mr. MATSUI. I couldn't agree with you more. I do agree with you, but I believe in the Constitution, the three branches of government, and when we make laws, I expect the administration, the executive branch, to interpret them properly, and I believe that is very important, so that is the basis of my comments.

Mr. CAMPBELL. I agree with you that I believe in the Constitution, and I believe in oversight, separation of powers, and all of the things that you believe in. I don't think we have any difference of opinion there.

Mr. MATSUI. I believe in fiscal responsibility as you believe in. The witness is excused, and I will call two other witnesses on the panel, Stephen Richman from the State division of New York; and James L. Solomon. Welcome, gentlemen.

Mr. Campbell, do you have any comments to make?

Mr. CAMPBELL. I would like to welcome the panel, and especially Commissioner Solomon from South Carolina, who not only has done an outstanding job in my State, but also he is a friend of mine, and it is always good to have someone from home, and we look forward to hearing your testimony.

Mr. SOLOMON. Thank you, sir.

Mr. MATSUI. Mr. Richman, your written testimony will be submitted for the record.

You may proceed.

STATEMENT OF STEPHEN L. RICHMAN, ASSISTANT CHIEF FOR SOCIAL DEVELOPMENT PROGRAMS, NEW YORK STATE DIVISION OF THE BUDGET, AND CHAIRMAN, COMMITTEE ON EDUCATION AND HUMAN RESOURCES, NATIONAL ASSOCIATION OF STATE BUDGET OFFICERS

Mr. RICHMAN. I will try to abbreviate that testimony in the interest of time.

Good morning, Mr. Chairman. I am Stephen Richman, assistant chief for social development programs in the New York State division of the budget, and chairman of the Education and Human Resources Committee of NASBO—the National Association of State Budget Officers.

As you may be aware, NASBO is affiliated with the National Governors' Association, and is the principal organization for the de-

velopment of the Governors' national fiscal and executive management policies.

I want to thank you on behalf of our association for providing us this opportunity to contribute to your deliberations on the AFDC quality control system, and the reform proposal, H.R. 1279, sponsored by Representative Matsui.

I am here today to lend NASBO's enthusiastic support for this measure, to discuss the specific benefits we believe it will provide, and to urge that similar reforms be extended to the food stamp and medicaid programs.

NASBO believes that the immediate enactment of quality control reform is imperative for two reasons. First, the current system is fundamentally deficient, and does not produce an accurate picture of State performance.

This credibility problem is further exacerbated by the magnitude of potential sanctions, which could exceed $2 billion in all income support programs by 1990. This would essentially constitute a withdrawal by the Federal Government from its historical commitment to means-tested entitlement programs.

Such a dramatic shift of funding responsibility would be unwise social policy, undermining the Federal-State partnership.

Second, current sanction provisions, if fully implemented, would inevitably result in negative fiscal consequences for the States and, given the current fiscal environment, may ultimately impair the States' ability to fund human services programs at adequate levels.

The fiscal health of most States in 1985 shows a moderate improvement. However, this improvement follows several years of extensive budget-cutting, revenue raising, deferred expenditures and other austerity measures adopted in response to the 1982-83 recession.

In fact, during the 1982-83 period, 44 States increased taxes and 43 States decreased their budgets. These austerity measures were necessary to enable States to achieve constitutionally required budget balance, but most of these actions only provided nonrecurring relief.

Although the States' estimated yearend balance of $5.4 billion in 1985, projected to decrease to $4.2 billion in 1986, represents a welcome increase over the historically low $2 billion 1983 level, it is still less than half of the general fund balances held prior to the recession.

Moreover, any valid assessment of the current fiscal condition of the States must take into account future expenditure requirements, the stability of current revenue streams, including Federal grants, any changes in Federal tax policy, and the likelihood of a slowdown in economic growth.

While the economic recovery has enabled many States to improve their financial condition, pressure to restore budget cuts, fund selected program initiatories, and repeal recent tax increases, will test the ability of States to maintain reasonable yearend balances as a buffer against future economic uncertainty.

All factors considered, the capacity of State governments to replace lost Federal dollars is marginal under existing circumstances. Accordingly, any further shift of financing responsibilities, which we must believe is the primary motivation for continuing the cur-

rent inequitable policies, could result in reduced services to the needy.

Moreover, levying these sanctions—which are totally unrelated to current program administration—would constitute a serious failure in the quality control program, for it would only serve to highlight its inequities and inefficiencies.

It is also very likely that Federal imposition of these sanctions would produce extensive, costly and protracted litigation by the States, which would seriously undermine the true goals of quality control, not in any measurable way improve the current deficit situation, and place further strain on the Federal-State partnership, which is essential for effective and efficient program operation.

With respect to the deficit issue, NASBO recognizes that the growth of Federal spending must be curtailed if the deficit is to be reduced. However, we do not agree that deficit reduction is dependent upon collection of arbitrary sanctions.

Notwithstanding the issue of fairness, the magnitude of these sanctions, while a significant danger for State budgets, cannot be considered a critical factor in Federal deficit reduction efforts. For example, the President's fiscal year 1986 budget assumes over $500 million will be collected in State AFDC sanctions, but the Congressional Budget Office projects that no sanctions will be collected prior to 1988, and that the actual level of Federal budget savings realized will be significantly lower than the budget estimates. CBO estimates that by 1990, approximately $330 million in sanctions could be collected, in contrast to the administration's $1.3 billion projection.

I would like to emphasize that NASBO considers quality control to be an essential tool in preserving effective management in income support programs. We wholeheartedly agree that achieving cost-effectiveness through reductions in errors is an appropriate and necessary public policy objective, and that accountability for the expenditure of public funds must remain a high priority.

However, to be truly effective, quality control programs must be fairly and equitably administered, recognizing the legitimate role, responsibilities, and administrative burdens of the States. Clearly, the current systems do not meet this test.

Rather, under the guise of improper administration, they are serving as devices to accomplish a shift of financial responsibility for income support programs, firmly integrated into the so-called social safety net, from one level of government to another. This policy, which can be characterized as backdoor federalism, is inequitable and unacceptable to the States.

I would like to move on now to highlight some specific concerns that demonstrate why the reforms included in Congressman Matsui's bill are imperative to restore fairness, and integrity to the quality control system.

Quality control has evolved from a management tool designed to improve program administration and lower the rate of incorrect payments into a vehicle to reduce the Federal matching share by levying sanctions against States failing to meet Federal error rate standards.

Unfortunately, the current Federal tolerance levels are generally unobtainable. Only one State has been able to meet and maintain the 3-percent AFDC target for 2 years in a row.

I would like to stop for a moment. When Assistant Commissioner Ross pointed out the States that met the 1983 3-percent level, it was the first time the States have received that information. It is interesting that the Department has this and the States don't.

Mr. CAMPBELL. She used the 4 percent.

Mr. RICHMAN. Four percent for fiscal year 1982 and three for fiscal year 1983.

I thought she said it was three for 1983. But in any case, these were States that met the tolerance level.

She listed 10 in 1983. Of the 3.7 million families on public assistance, only about 10 percent of those families were located in those States, States such as Idaho, Nevada, and South Dakota. South Dakota has 5,000 families. Where was New York with 371,000 families? California? Where was Pennsylvania, Ohio, and Texas and on and on?

So we have only about 10 percent of the cases.

Mr. CAMPBELL. The 10th largest State in the Union, where was it, North Carolina?

Mr. RICHMAN. I think it might have been on the list.

She read them rather quickly.

Mr. CAMPBELL. That is what I was trying to look for.

Mr. RICHMAN. We are talking about States with very, very low populations and, by the way, most of those States do not have unemployed parent programs which adds to the complexity.

Let me go on if I may.

A Congressional Budget Office analysis conducted several years ago concluded that more stringent sanction provisions would not result in lower error rates, but in bigger sanctions, and that the principal effect of larger sanctions would simply be to shift costs to the States.

In addition, there is no empirical data to support the contention that every State should be able to achieve that same error rate. Because of demographic variances, program complexities, and differences in size of caseload and scope of program coverage, current quality control policies fail to take this into account.

Congressman Matsui's proposal attempts to remedy these problems by, first, increasing the base error rate tolerance level from 3 to 4 percent in the AFDC program. The bill also provides for further upward adjustments from that tolerance level based on specific State circumstances.

These adjustments are designed to recognize the administrative complexities unique to each State, such as the percentage of cases involving unemployed parents, or those with earned income. We believe that recognition of such factors is an important step in determining realistic error rate standards, and measuring true State administrative performance.

Even DHHS, in its own study, concluded that AFDC error rates are three times higher among families with earnings than among those with no earnings. In addition, HHS found that error rates are much higher for two parent families than in cases with a single

parent. Surely such findings can and should be used to construct objective criteria for setting standards and assessing performance.

Counting client errors and technical errors in the error rates upon which sanction amounts are calculated are other examples of flaws in the existing system which H.R. 1279 would address.

Including technical errors in computing sanctions means that States are penalized for mistakes that generally do not result in erroneous payments. When client errors are counted, States are being held fiscally liable for errors which may be beyond the control of even the most responsible administrative agency.

To illustrate this point, it is important to note that a caseworker generally has no more than 30 days to make a final determination of eligibility and appropriate benefit levels after review of all relevant client documentation. In contrast, both State and Federal auditors usually have in excess of several months to conduct an exhaustive review of that determination.

I would also add that further reduction of these errors could prove rather costly and we may find ourselves approaching the point where the cost exceeds the savings achieved.

We are also in agreement with other methodological changes proposed in the bill which call for use of the lower bound instead of the midpoint of the statistical range of confidence for determining error rates and error rate sanction amounts.

We believe that since there is no universal agreement on this approach, and because using the midpoint could result in States being sanctioned for errors not committed, that the use of the lower bound is more appropriate. This position has been supported by recommendations of both the General Accounting Office and the National Academy of Sciences.

H.R. 1279 contains numerous other provisions necessary to strengthen and improve the current system. However, in the interests of time, I would like to highlight only one additional point. A major weakness of the existing system is the lack of timely Federal reporting of error rates—usually 2 to 3 years behind State determinations.

The Federal Government should be held, as the States are, to standard timeframes for the release of error rate data. Obviously, data received years after the close of a period cannot be useful to the States in the development of timely and effective corrective action.

This lack of timeliness reinforces our conviction that current quality control systems, which should assist States to achieve greater levels of efficiency and effectiveness, are in themselves inefficient and do not meet their primary objective, the timely improvement of program management.

Mr. Chairman, I believe the committee has a position paper on quality control that NASBO prepared and I would ask that it be entered into the record, if I may.

Mr. MATSUI. Without objection.

Mr. RICHMAN. Thank you, Mr. Chairman.

In summary, NASBO believes that reform is necessary to restore lost confidence and reliability in a quality control system which now threatens to undermine the AFDC programs across the country. Its fundamental weaknesses are that it arbitrarily and haphaz-

ardly measures State errors, and it penalizes States for these errors long after they were supposedly committed.

The system fails to achieve its goal of providing timely and accurate information to States so that administrative improvements can be implemented. Instead of strengthening the State program, the heavy sanctions may force States to cut back the services and benefits provided to needy families, as well as force us to reduce our own administrative expenses. This, in turn, would increase the likelihood of additional payment errors.

It is also ironic that Federal agencies are now planning to collect sanctions at a time when State error rates are at an all-time low. The nationwide AFDC error rate has dropped from 16.5 percent in 1973 to 7 percent in 1982.

This progress has been achieved despite continuously changing Federal program requirements which contribute heavily to errors, and in the absence of sanction collections—so called incentives for improvement.

Further, this dramatic reduction in error rates results from a significant investment of resources by the States to strengthen program administration. This investment is clear evidence of a firm State commitment to quality control, a commitment which is ongoing.

I would add, Mr. Chairman, that State initiated administrative improvements are reflective of the significant State resources already invested in human services programs. In the AFDC program alone, States contribute $7.5 billion, 46 percent of the gross program cost. Obviously, there is already ample incentive for States to achieve the highest level of accuracy, without the threat of sanctions.

The States have, and will continue to hold themselves accountable for the responsible use of public funds. That responsibility, however, also extends to ensuring fair and accurate systems of measuring the quality of program administration.

Mr. Chairman, NASBO looks forward to working with this committee on reforming the quality control system. If we can provide further information, please don't hesitate to contact us.

[The prepared statement follows:]

STATEMENT OF STEPHEN L. RICHMAN, CHAIRMAN, COMMITTEE ON EDUCATION AND HUMAN RESOURCES OF THE NATIONAL ASSOCIATION OF STATE BUDGET OFFICERS

INTRODUCTION

Good morning. Mr. Chairman, I am Stephen Richman, Assistant Chief for Social Development Programs in the New York State Division of the Budget, and Chairman of the Education and Human Resources Committee of NASBO—the National Association of State Budget Officers. As you may be aware, NASBO is affiliated with the National Governors' Association, and is the principal organization for the development of the Governor's national fiscal and executive management policies. I want to thank you, on behalf of our association, for providing this opportunity to contribute to your deliberations on the AFDC quality control system, and the reform proposal—HR 1279—sponsored by Representative Matsui. I am here today to lend NASBO's enthusiastic support for this measure, to discuss the specific benefits we believe it will provide, and to urge that similar reforms be extended to quality control policies for the food stamp and medicaid programs.

NASBO believes that the immediate enactment of quality control reform is imperative for two reasons. First, as currently structured, the system itself is fundamentally deficient and does not produce an accurate picture of state performance. It also

reflects a distrust and lack of confidence in the states. This credibility problem is further exacerbated by the magnitude of potential sanctions, which could exceed $2.0 billion in all income support programs by 1990, and would essentially constitute a withdrawal by the Federal government from its historical commitment to means-tested entitlment programs. Such a dramatic shift of funding responsibility would be unwise social policy, undermining the federal-state partnership, and jeopardizing the very entitlement nature of these programs.

Secondly, current sanction provisions, if fully implemented, will inevitably result in negative fiscal consequences for the states and may ultimately impair the states' ability to fund human services programs at adequate levels.

This latter point is especially relevant given the current fiscal environment.

FISCAL HEALTH OF THE STATES

For most states, the 1985 fiscal year shows a moderate improvement in state finances. However, this improvement follows several years of extensive budget-cutting, revenue raising, deferred expenditures and other austerity measures adopted in response to the 1982–83 recession. In fact, during the 1982–83 period, 44 states increased taxes and 43 states decreased their budgets. While all of these austerity measures were necessary to enable states to achieve constitutionally required budget balance, it should be noted that most of these actions provided non-recurring relief.

Although the states' estimated year-end balance of $4.6 billion in 1985, projected to decrease to $4.2 billion in 1986, represents a welcome increase over the historically low $2 billion 1983 level, it is still less than half of the general fund balances held prior to the recession. While the economic recovery has enabled many states to improve their financial condition, pressure to restore budget cuts, fund selected program initiatives, and repeal recent tax increases will test the ability of states to maintain reasonable year-end balances as a buffer against future economic uncertainty.

Any valid assessment of the current fiscal condition of the states must take into account future expenditure requirements, the stability of current revenue streams, including Federal grants, any changes in Federal tax policy, and the likelihood of a slowdown in economic growth. All factors considered, the capacity of state governments to replace lost Federal dollars is marginal under existing circumstances. Accordingly, any further shift of financing responsibilities, which we must believe is the primary motivation for continuing the current inequitable policies, could result in reduced services to the needy.

Moreover, levying these sanctions would constitute a serious failure in the quality control program, for it would only serve to highlight the inequities and gross inefficiencies inherent in the current system. It is also very likely that the imposition of these sanctions by the Federal government would produce extensive, costly and protracted litigation by the states, which would seriously undermine the true goals of quality control, not in any measurable way improve the current deficit situation, and place further strain on the Federal-state partnership essential to effective and efficient program operation.

Let me directly address the deficit issue briefly, if I may. NASBO recognizes that the growth of federal spending must be curtailed if the deficit is to be reduced. However, we do not agree that deficit reduction is dependent upon collection of arbitrary sanctions. Notwithstanding the issue of fairness, the magnitude of these sanctions, while a significant danger for state budgets, cannot be considered a critical factor in Federal deficit reduction efforts. For example, while the President's FY '86 budget assumes over $500 million will be collected in state AFDC sanctions, the Congressional Budget Office projects that no sanctions will be collected prior to 1988, and that the actual level of Federal budget savings realized will be significantly lower than the budget estimates. CBO estimates that by 1990, approximately, $330 million in sanctions could be collected, in contrast to the Administration's $1.3 billion projection.

I would like to emphasize that NASBO considers quality control to be an essential tool in preserving effective management in income support programs. We wholeheartedly agree that achieving cost-effectiveness through reductions in errors is an appropriate and necessary public policy objective, and that accountability for the expenditure of public funds must remain a high priority. However, to be truly effective, quality control programs must be fairly and equitably administered, recognizing the legitimate role, responsibilities, and administrative burdens of the states. Clearly, the current systems do not meet this test. Rather, under the guise of improper administration, they are serving as devices to accomplish a shift of financial

responsibility for income support programs, firmly integrated into the so-called social safety net, from one level of government to another. This policy, which can be characterized as backdoor federalism, is inequitable and unacceptable to the states.

I would like to move on now to highlight some specific concerns and demonstrate why the basic reforms included in Congressman Matsui's bill are imperative—not only to ensure essential fairness, but to preserve the integrity of quality control programs.

SPECIFIC PROBLEMS/REFORM PROPOSALS

Quality control has evolved from a management tool designed to improve program administration and lower the rate of incorrect payments into a vehicle to reduce the Federal matching share by levying sanctions against states failing to meet Federal error rate standards. Unfortunately, the current Federal tolerance levels are generally unobtainable, and therefore the program is basically flawed. Only one state has been able to meet and maintain the 3% AFDC target for two years in a row. Several years ago, the Congressional Budget Office in its analysis of an administration proposal to create more stringent sanction provisions, concluded that it would not result in lower error rates, but in bigger sanctions—and that the principal effect of larger sanctions would simply be to shift costs to the states.

There is no empirical data to support the contention that every state should be able to achieve the same error rate, and current quality control policies fail to take into account the differences among the states, including demographic variances, program complexities, size of caseload and scope of program coverage.

Congressman Matsui's proposal attempts to remedy these problems by, first, increasing the base error rate tolerance level from 3% to 4% in the AFDC program. Additionally, the bill provides for further upward adjustments from that tolerance level based on specific state circumstances. These adjustments are designed to recognize the administrative complexities unique to each state, such as the percentage of cases involving unemployed parents, or those with earned income. We believe that recognition of such factors is an important step in determining realistic error rate standards, and measuring true state administrative performance. For example, unpublished studies conducted by DHHS show that AFDC error rates are three times higher among families with earnings than among those with no earnings. In addition, these studies find that error rates are much higher for two parent families than in cases with a single parent. Surely such findings can and should be used to construct objective criteria for setting standards and assessing performance.

Counting client errors and technical errors in the error rates upon which sanction amounts are calculated are other examples of flaws in the existing system. Including technical errors in computing sanctions means that states are penalized for mistakes that generally do not result in erroneous payments. In addition, because client errors are counted, states are being held fiscally liable for errors which are beyond the control of even the most responsible administrative agency. To illustrate this point, it is important to note that a caseworker generally has no more than 30 days to make a final determination of eligibility and appropriate benefit level after review of all relevant client documentation. In contrast, both state and Federal auditors usually have in excess of several months to conduct an exhaustive review of that determination.

For these reasons, NASBO supports provisions of H.R. 1279 which would exclude technical and client-caused errors from calculations of error rate sanctions. I would also add that further reduction of these errors could prove rather costly and we may find ourselves approaching the point where the cost exceeds the savings achieved.

We are also in agreement with other methodological changes proposed in the bill which call for use of the lower bound of the statistical range of confidence for determining error rates and error rate sanction amounts. Currently, the midpoint of that confidence interval is relied to determine the final estimate of a state's annual error rate. We believe that since there is no universal agreement on this approach, and because it could result in states being sanctioned for errors committed, that the use of the lower bound is more appropriate. This position has been supported by recommendations of both the General Accounting Office and the National Academy of Sciences.

H.R. 1279 contains many other provisions necessary to strengthen and improve the current system. However, in the interests of time, I'd like to highlight only one additional point. A major weakness of the existing system is lack of timely Federal reporting of error rates. Past experience suggests that the Federal government should be held—as the states are—to standard timeframes for the release of error rate data so that this data can be useful to the states in developing corrective ac-

tions. The release of Federal data traditionally lags 1-2 years behind the state's own determination of its error rate. For example, states were not informed of their final AFDC error rates for FY '81 until March 1983 and, although it is already close to the end of FY '85, states have not yet been notified of their FY '82 rates. Obviously, data received so long after the close of a period cannot be useful to the states in the development of timely and effective corrective action. This lack of timeliness reinforces our conviction that current quality control systems, whose aim should be to assist states to achieve greater levels of efficiency and effectiveness, are in themselves inefficient and do not meet their primary objective, the timely improvement of program management.

Mr. Chairman, I have with me a position paper on Quality Control that NASBO has developed which addresses these issues in more detail. I would appreciate it if that paper could be entered into the Committee's record.

SUMMARY

In summary, NASBO believes that reform is necessary to restore lost confidence and reliability to a quality control system which now threatens to undermine AFDC programs across the country. Its fundamental weaknesses are that it arbitrarily and haphazardly measures state errors, and it penalizes states for these errors years after they were supposedly committed. The system fails to achieve its goal of providing timely and accurate information to states so that administrative improvements can be implemented. Instead of strengthening the state program, the heavy sanctions may well force states to cut back the services and benefits provided to needy families, as well as force us to reduce our own administrative expenses. This, in turn, would increase the likelihood of additional payment errors.

It is also ironic that Federal agencies are now planning to collect sanctions at a time when state error rates are at an all-time low. The nationwide AFDC error rate has dropped from 16.5% in 1973 to 7.3% in 1982. This progress has been achieved despite continuously changing Federal program requirements which contribute heavily to errors, and in the absence of sanction collections—so called "incentives" for improvement.

Further, this dramatic reduction in error rates results from a significant investment of resources by the states to strengthen program administration. This investment is clear evidence of a firm state commitment to quality control, a commitment which is ongoing.

I would add, Mr. Chairman, that state initiated administrative improvements are reflective of the significant state resources already invested in human services programs. For example, in the AFDC program alone, states contribute $7.5 billion, 46 percent of the gross program cost. Obviously, there is already ample incentive for states to achieve the highest level of accuracy, without the threat of sanctions.

The states have, and will continue to hold themselves accountable for the responsible use of public funds. That responsibility, however, also extends to ensuring fair and accurate systems for measuring the quality of program administration.

Mr. Chairman, NASBO looks forward to working with this Committee on reforming the quality control system. If we can provide further information please don't hesitate to contact us.

Quality Control in Federal Income-Support Programs: The Imperative for Reform—A Position Paper [1]

INTRODUCTION

Under existing Federal quality control policies it is conceivable that the Federal government could levy more than $1.5 billion in fiscal sanctions against the states over the next five years. This staggering sum is of deep concern to state budget officials since it represents a serious threat to both the fiscal vitality of the states and the integrity of state administered human services programs. For most states, the 1984 fiscal year ended with a moderate improvement in state finances. However this improvement followed two years of extensive budget cutting, revenue raising, expenditure deferrals and other austerity measures, actions that must all be considered temporary in nature. Any valid assessment of the current fiscal condition of the states must take into account future expenditure requirements, the stability of current revenue streams, including Federal grants, and the likelihood of a slowdown in economic growth. All factors considered, the states can ill-afford to absorb quality

[1] Adopted, March 18, 1985.

control penalties of the magnitude estimated above without profound negative consequence. Moreover, levying these sanctions would constitute a serious failure in the quality control program, for it would only serve to highlight the inequities and gross deficiencies inherent in the current systems. It is also very likely that the imposition of these sanctions by the Federal government would produce extensive, costly and protracted litigation by the states, which would seriously undermine the true goals of quality control.

The National Association of State Budget Officers (NASBO) believes that it is in the best interests of the Federal government and the states to avoid this outcome and the confrontation it could produce. Rather, the Association believes that now, prior to any precipitous action by the Federal government, is the time to embark upon a joint venture to produce real reform in the quality control system.

NASBO believes that quality control is an essential tool in preserving effective management in income support programs. We whole heartedly agree that achieving cost effectiveness through reductions in errors is an appropriate and necessary public policy objective, and that accountability for the expenditure of public funds must remain a high priority. However, to be truly effective quality control programs must be fairly and equitably administered, recognizing the legitimate role, responsibilities, and administrative burdens of the states. Clearly, the current systems do not meet this test. Rather, they are serving as devices to accomplish a shift of financial responsibility for federally guaranteed income support programs, from one level of government to another. This policy is inequitable and unacceptable to the states.

To respond to these concerns, this paper sets out, in broad form, and from the state perspective, the problems we believe exist with current quality control and fiscal sanction policies, and suggests specific remedies and avenues to achieve programmatic and fiscal reform. NASBO firmly believes that adoption of these recommendations will ultimately lead to more effective program management and a more efficiently administered human services system. It is our objective, therefore, that this paper provide a basis for further discussion with Federal officials with respect to both the future policy development and detailed application of national quality control initiatives.

BACKGROUND

Quality control in Federal income support programs dates back to 1963 when the Department of Health, Education and Welfare promulgated regulations requiring biannual reviews of AFDC case actions. In the intervening twenty years at least half a dozen major quality control procedural and policy changes have been implemented in AFDC alone, most without benefit of congressional action. In addition, since the mid-1970's quality control reviews have been required in the Food Stamp and Medicaid programs and in these programs as well policy revisions have been commonplace. Although these three Federal income support programs are integrally related to one another, quality control policies among the programs are not uniform. This lack of consistency in quality control is indicative of a larger programmatic problem in AFDC, Medicaid and Food Stamps. Over the past four years each of these complex Federal programs has experienced major policy changes on a continuing basis. Too often these changes have further exacerbated existing inconsistencies among the programs. At the same time, congressional action has required Federal regulatory change, conforming state legislation, and numerous changes to local eligibility manuals, procedures and automated systems required for administrative support. These changes have been costly to implement and have created an administrative nightmare for the states. However, despite the growing complexity of these Federal assistance programs, despite numerous and frequent policy changes of significance, and notwithstanding shifting and inconsistent quality control policies, states dramatically reduced their error rates prior to the collection of any fiscal sanctions. From 1973 to 1982 the AFDC error rate has been more than halved, dropping from 16.5 percent to 7.3 percent. The error rate in Medicaid fell from 6.2 percent in 1978 to an estimated 3.3 percent in 1982, and the Food Stamp error rate declined from 23.5 percent in 1974 to 12.2 percent by 1982.

These error rate reductions and concomitant Federal and state savings have been achieved during a period in which the overall administrative burden on states has increased significantly. Moreover, the decline in error rates signifies the states' determination to reduce inappropriate payments and their commitment to invest considerable resources to the achievement of that goal. Indeed, the states and the Federal government have spent literally hundreds of millions of dollars on corrective actions during the past decade. Improvements have been made in such areas as computer-assisted eligibility determination and grant calculation procedures, data

matches involving wages and other benefit programs, worker training programs, caseload managment, client education, fraud detection and prevention, and administrative performance monitoring.

Clearly, it is apparent that error rate reduction is in the best fiscal interests of the states, and that the prospect of cost savings has been a significant motivating force in the improvements in program management achieved to date. Further reductions in error rates are not likely to be achieved through the imposition of sanctions. Rather, the curtailment of errors will largely depend on the complexity of Federal policy, the frequency and magnitude of policy changes, the rationality and cost effectiveness of quality control efforts, and the availability of sufficient Federal and state funding for program administration. In the following sections we will describe major shortcomings in existing quality control programs and propose remedies to bring about needed reform.

SIGNIFICANT PROBLEMS IN QUALITY CONTROL PROGRAMS

The current Federal quality control programs are in many respects inefficient and ineffective. They do not produce a valid and reliable estimate of real errors or produce information on a timely basis, and they often result in penalizing states that have been performing well. Moreover, the quality control programs disregard crucial socio-economic and program variations among the states. They are practiced inconsistently from one region of the country to another, and they do not appropriately recognize the administrative impact of frequent Federal policy changes, and the complexity and inconsistency of policy across the three income support programs. Approaching these problems from a somewhat more detailed standpoint, they fall into the following major categories:

Performance Targets: The current 3 percent error rate tolerance level in the AFDC program is unreasonable. Only one state has been able to achieve and maintain such a performance level for three consecutive periods. The performance target does not adequately recognize the complexity and intricacy of the eligibility and benefit calculation processes; nor does it recognize valid and crucial state-by-state differences. For example, no provision is made to distinguish size of caseload, poverty levels, unemployment, urbanization, the scope of coverage or benefit levels. This is the case despite a report by DHHS in 1982 that program variations can significantly affect error rates and that states with large, urban caseloads face more difficult problems in controlling payment errors, even in the presence of comparable resources.

Definition of Errors: The current systems ignore valid differences between client-caused errors and agency errors, and wrongfully require states to count technical errors in calculating penalties. Approximately half of all errors identified are client-caused and appear for the most part to be beyond the capacity of state agencies to fully control, despite the substantial resources that have been expended on control techniques and education. On the other hand, technical errors which are unrelated to payment errors count equally in the calculation of sanctions. States are understandably reluctant to spend limited administrative funds to correct errors that have little, if any, fiscal consequence.

Computing Error Rates: Current mandates that dictate the manner in which error rates must be computed may act to overstate actual state errors. Since these error rates are based on samples of cases, only the probable range, and not the true error rate is determined. As a result, a state may be subject to a penalty because its mid-point error rate exceeds the Federal tolerance level, even though the lower end of its error rate range falls below the tolerance. Consequently, states may be penalized for more errors than are actually committed. In addition, due to the small size of some of the samples, larger ranges or confidence intervals are required, leading to greater uncertainty in error measurement and disproportionate impacts. This, combined with the requirement to count technical errors, can create an inaccurate picture of state performance.

Review Process. The manner in which the initial quality control review and subsequent Federal re-review are conducted is not reasonably related to the circumstances under which an eligibility worker must operate. As a consequence, the validity of the quality control process as a fair indicator of state administrative performance is clearly suspect. A quality control auditor has an average of six months to investigate a client's financial circumstances, while a caseworker has a maximum of thirty days to complete the same review and make an eligibility determination. In addition, quality control review standards are far more rigorous than those that an eligibility worker could be reasonably expected to apply. Moreover, Federal auditors have, in the re-review process, the additional advantage of focusing solely on the

cases included in the state sample without being confronted by the time constraints and competing demands routinely faced by eligibility workers. It is apparent, therefore, that the opportunities available to Federal reviewers to identify potential errors are not generally available during the initial eligibility determination process.

Federal Management of Quality Control: Quality control management policies are applied unevenly across the country and are not implemented in a cost-effective manner. For example: As stated previously, there is a lack of consistency and uniformity in quality control polices among the several Federal income support programs; the quality of Federal reviews differs within and among the various regions and causes inequities in the way states are treated; different Federal regions have adoted and applied opposing policy interpretations of regulations; ambiguous Federal policies requiring judgemental application have led to additional errors through interpretation; federal delays in releasing irror rate date have made it difficiult for states to plan and implement effective corrective action programs, and to legitimately document their requests for sanction waivers; and the cost-effectiveness of corrective actions is not taken into account in determining whether sanction waivers are granted. In certain instances the cost to achieve error reductions will exceed the funds saved.

In summary, these problems, which go to the very heart of the quality control program, seriously undermine its effectiveness and call into question the Federal government's assertion that quality control is a positive management tool for promoting better program administration. Rather, it now appears that quality control may become a mechanism to reduce Federal funding for income support programs while shifting the financial burden to the states. As such, it would represent a backdoor approach that would undermine and reverse the long standing Fedeal financial commitment to basic safety net programs. If implemented in this fashion it is highly likely that states may be forced to reduce administrative costs and/or recipient benefits or services.

RECOMMENDATIONS

NASBO is committed to working with Federal officials, members of Congress and other interested parties in bringing about real reform in quality control. We believe it would be a serious mistake for the Federal government to continue the policies now in force and to impose costly, unfair, inefficient and ineffective sanctions upon the states. These sanctions would undoubtedly harm, rather than improve the prospective administration of income support programs, and could constrain states to institute reductions in services or administration they otherwise would not impose. We believe the following series of recommendations, if implemented, can positively reshape the program and serve to reaffirm the importance of quality control as a necessary and appropriate management tool.

Performance Targets: Uniform performance targets now established at 3 percent nationwide should be replaced. Tolerance levels should appropriately differentiate among state caseload and program characteristics, thus recognizing uncontrollable socio-economic factors and the complexity of state administered programs. Alternatively, current error rate performance targets could be replaced either by a process that separates major protions of eligibility determination and benefit calculation, establishing discrete targets for each and recognizing the particular state circumstances in which these programs operate within federal guidelines (e.g. the number of optional services provided); or by a system that establishes targets based upon achievable goals as determined by peer performance.

Definition of Errors: Those technical errors which do not contribute to erroneous expenditures should be excluded for purposes of calculating fiscal sanctions. In addition, client-caused errors should be discounted in determining ineligible or incorrect payments subject to fiscal sanction. Many technical errors cannot be reasonably controlled by administrators, and may not contribute to erroneous program expenditures. Discounting client-caused errors would recoginze that states cannot hope to totally eliminate these errors. However, errors of both types, technical and client-caused, should be measured for management purposes.

Computing Error Rates: The official error rate for purposes of fiscal sanctions should be the lower end of the statistical range in which it falls. This would obviate the possibility of overstating a state's error rate and imposing higher than warranted sanctions. This recommendation is consistent with positions taken by the General Accounting Office and the National Research Council. Furthermore, quality control reviews should be conducted, at state option, either semi-annually or annually, and be based on a statistically reliable sample of cases.

Review Process: The quality control review process should be modified so that it operates according to reasonable time constraints and review standards. In particular, Federal re-reviews should be completed within six months after the state review is conducted and Federal auditors should operate without the benefit of the specific state-by-state audit results. This modification will enhance the credibility of the quality control process as a fair indicator of state administrative performance.

Federal Management of Quality Control: The Federal government should assure that quality control policies are uniformly interpreted and applied by the regional offices across the country and that, to the extent practicable, quality control standards are consistent or uniform among the three income support programs. In addition, reasonable time limits (e.g. six months) should be established within which a state's error rate is determined and finalized through the Federal re-review process, so that corrective action can be undertaken in a timely and cost-effective manner. The current time lag for final determinations averages two years from the close of the audited period. Clearly this delay further undermines the states' ability to achieve what should be the major objective of quality control—improved administration. With respect to identified errors, the Federal agencies should consider extraordinary state circumstances and the cost-effectiveness of corrective actions when determining the approvability of a state's waiver request. Finally, we strongly believe that states should be afforded the option to appeal adverse quality control decisions before a departmental grant appeals board.

CONCLUSION

It is the position of NASBO that the foregoing recommendations constitute a reasonable basis for achieving reform in quality control, and that their implementation would dramatically improve the effectiveness and credibility of performance monitoring and control by Federal agencies. These recommendations have been developed to facilitate achievement of the following goals: To maintain accountability in the expenditure of public funds for income support programs, while ensuring program integrity and the equitable distribution of financial responsibility between the Federal Government and the states; To assure that the quality control process yields error rates that are fairly determined and appropriately reflective of program complexity and socio-economic and geographic factors beyond a state's control; To establish fair and uniform management of quality control programs among Federal agencies and throughout the Federal regions; and to impose fiscal penalties that are based solely upon overpayments made, or erroneous benefits issued; while states should be required to identify and attempt to correct all errors, no sanctions should be imposed that are not related to misspent funds, nor should any sanctions be imposed that are based upon current Federal standards or guidelines that are determined to be improper or inequitable.

Furthermore, it is NASBO's position that prior to any imposition of sanctions by the Federal government for past periods, the inequities in the current system should be remedied, incorporating the reforms recommeded in this paper. We believe this is essential to assure that the error rates promulgated are truly reflective of state performance. This will significantly enhance the potential for broad-based acceptance of the quality control process.

To further strengthen the quality control process as a fair indicator of state performance, the program should provide, in the future, for appropriate lead time and a grace period from sanctions to help states respond to any change in Federal rules or regulations. Given the magnitude of program changes in the recent past, and the time required by states to adjust systems and procedures, temporary waivers would provide a reasonable opportunity for appropriate implementation of program changes.

In summary, now is the time to move toward the implementation of these goals. We are at a crucial juncture in quality control, where the opportunity for achieving reform in a cooperative environment currently exists. NASBO believes that it would be a serious mistake to let this opportunity slip by, and accordingly we look forward to a constructive dialogue with Federal officials in the weeks and months ahead.

RESOLUTION

QUALITY CONTROL ERROR RATE SANCTIONS

Whereas, the National Association of State Budget Officers firmly believes that achieving cost effectiveness through reductions in income support program errors is an appropriate and necessary public policy objective;

Whereas, the current Federal Quality Control systems for the needs-tested entitlement programs administered by the states are inaccurate and inequitable in their measurement of state performance;

Whereas, punitive sanctions are not effective in achieving the goal of reducing AFDC, Food Stamp and Medicaid error rates nor are they necessary because states and localities have a major financial interest in proper administration of these programs and because each error in the AFDC and Medicaid programs unnecessarily expends state dollars;

Whereas, the states have accomplished significant reductions in error rates over the past several years and will continue our concerted effort to reduce these error rates even further;

Whereas, the imposition of sanctions by the Federal government may require states to reduce expenditures in human services programs and could ultimately lead to a weakening of the administration of these programs;

Therefore Be It Resolved that the National Association of State Budget Officers recognizes that there is sentiment in Congress for retaining sanctions and is committed to working with Federal officials to shape and equitable quality control system. It is the position of the National Association of State Budget Officers that such a system must recognize the legitimate role, responsibilities and administrative burdens of the states and accurately reflect the complexities of the Federal income support programs. Accordingly, we urge the Congress to consider immeidate action that would at a minimum:

Eliminate sanctions for "technical errors," i.e., those errors which do not affect the final payment, from the calculation of error rates used for fiscal sanctions;

Set error rates at the lower bound of the range of the statistical estimate;

Require that the quality control review process operate on a timely basis, and incorporate reasonable review standards;

Assure the uniform application of quality control policies nationwide and the development of consistent standards across the income support programs;

Provide states appropriate lead-time and a grace period sanctions to help states respond to any change in Federal rules or regulations.

Be It Finally Resolved that the National Association of State Budget Officers recommends that the imposition of sanctions. Under the current system be waived until such a time as the Congress has completed action on the necessary reforms. Failure to take such action will only increase the uncertainty under which states must budget for these programs and may result in unnecessary reductions in vitually needed services.

Approved by the National Association of State Budget Officers Membership, March 18, 1985.

GERALD H. MILLER,
Secretary.

Mr. MATSUI. Thank you very much.

Mr. Solomon.

STATEMENT OF JAMES L. SOLOMON, COMMISSIONER, SOUTH CAROLINA DEPARTMENT OF SOCIAL SERVICES, ON BEHALF OF THE NATIONAL COUNCIL OF STATE HUMAN SERVICE ADMINISTRATORS

Mr. SOLOMON. Thank you very much, Mr. Chairman, and Mr. Campbell. I just might say being from South Carolina, I talk a bit slower than most people, but I am going to try to stay within your time limit.

Mr. Chairman, thank you for this opportunity to appear before you to discuss the pressing need for reform in the AFDC quality control system.

I am James Solomon, commissioner of the South Carolina Department of Social Services. I am pleased to be here today on behalf of the National Council of State Human Service Administrators to represent our views on quality control.

The present AFDC quality control system produces neither an accurate nor an equitable measure of State performance. Nonetheless, it is used to assess millions of dollars in fiscal penalties

against the States. Unless reformed, the quality control system will serve only to undermine State efforts to make the AFDC program work the way the public wants it to—fairly and efficiently.

Instead of strengthening the AFDC program, punitive fiscal sanctions may well force States to curtail benefits as well as the very administrative improvements needed for error reduction. These results, of course, are the reverse of what the quality control program is supposed to accomplish. And they are exacerbated when you consider that the same quality control problems exist in the Medicaid and Food Stamp Programs. As a matter of both social and fiscal policy, the system must be changed.

The States realize that the quality control issue is both complex and controversial. We also recognize that given broader policy concerns such as the Federal budget, quality control reform may not be viewed as the most politically salient or pressing matter on the congressional agenda. Nevertheless, we believe it is an issue that must be dealt with soon if serious repercussions are to be avoided in the operation of Federal assistance programs.

We applaud the leadership your committee has taken in efforts to objectively evaluate the complexities of the AFDC quality control system to determine if improvements can be made. We are confident that you will conclude, as we have, that there are significant flaws in the current system which warrant correction.

The State human service administrators want especially to thank Mr. Matsui for introducing H.R. 1279, the AFDC Error Reduction and Quality Control Improvement Act. The reforms recommended in Mr. Matsui's bill would make numerous improvements required to achieve fairness and accuracy in the requirements governing AFDC quality control procedures. We are pleased to join the National Governors' Association and the National Association of State Budget Officers in endorsing this important piece of legislation.

Let me stress at the outset that the States, no less than the Federal Government, are committed to the concept of quality control. We are concerned with serving the public in the most efficient and effective manner. I hope that this fact will not get lost in this discussion. The States want to ensure that limited public assistance funds go only to recipients who meet the eligibility requirements. We believe our performance, as well as the substantial investment we have made, and continue to make, in error reduction efforts, reflect this commitment.

In the past decade, States have made tremendous strides toward cutting their error rates. As you know, the national AFDC error rate dropped more than 50 percent—from 16.5 percent to 7.3 percent. According to HHS own data, the error rate is expected to further decline to 6.1 percent by the end of this fiscal year. We reject the claim continually made by the Federal Government that stringent fiscal sanctions and quality control policies have been responsible for this progress.

Our accomplishments clearly indicate that States do not need their feet held constantly to the fire in order to induce them to cut errors. We have as our incentive our commitment to effectively serve only clients who are eligible for these programs. After all, mispayments waste State as well as Federal dollars.

States will continue to make the investments necessary to minimize errors and to explore more effective means of error control. State commitment alone, however, is not enough to ensure continued progress. Further error reduction depends not on subjecting States to arbitrary and punative penalties but on restoring confidence and reliability in the quality control system, to make it truly a useful management tool.

I want to emphasize one additional point before discussing the specific flaws, and reforms needed, in the present system. In the interest of time I am not going to discuss these at length.

Mr. MATSUI. You may.

Mr. SOLOMON. First, let me say that the States do not object to being held accountable. We recognize that accountability is critical to effective management of any program, but certainly the AFDC program. Obviously, the prospect of losing Federal funds is not one that any State finds attractive. The States, however, are not asking to be exonerated, only to have their performance measured against a fair and reliable system. Any legitimacy of sanctions depends on their being reasonably related to an accurate determination of payment errors over which the States have control. This is not now the case. I would like to outline for you the problems with the present quality control system.

I mentioned earlier that error rates are inflated and serve as an unfair basis for penalties. For example, paperwork omissions are counted as errors.

Take as an example a young woman with two children who receives AFDC as a sole source of support. When a case is reviewed by quality control, it is discovered that one of her children lacks a Social Security number. Under the current system, the payment to the family is considered erroneous because of the missing Social Security number, and the State is penalized. Once the Social Security number is obtained, payments continue to be made to the family, but the case remains in error for sanction purposes.

Take another family in similar circumstances, except that the mother works and chooses not to report her earnings for a period of time. This case is picked up by quality control and found to be in error as well.

The State is penalized in both cases, although one family is clearly eligible while the other is clearly ineligible and intentionally abusing the welfare system. A technical error involving no actual mispayment is given the same weight as an error involving paying benefits to an ineligible family.

While we agree that it is important to monitor and correct such errors, States should not be held fiscally accountable for errors that do not entail real mispayments. Paperwork omissions—which have little if any direct fiscal consequence—are an unfair basis for assessing millions of dollars in penalties.

Other inequities in the system: Client-caused errors are weighted as heavily as agency-caused errors; error rates are not adjusted to compensate for the shortcomings of the sampling processes; the error rate tolerance level is unrealistic, yet it is used as the sole performance standard; the complexity and intricacies of AFDC go unrecognized; external factors that contribute to higher error rates

are not taken into account; and the Federal quality control procedures are inequitable and insufficient.

Clearly, insufficient quality control standards exist for the Federal Government. The Federal Government, unlike the States, is generally not bound by any restrictions, time frames, or standards in carrying out its quality control responsibilities. As a result, Federal decisions are not made on a timely basis, and oftentimes are arbitrary.

Eligibility workers have very little time to make eligibility decisions, and they must do so rapidly. Quality control workers, particularly Federal quality control reviewers, on the other hand, have much more time to make determinations regarding a case. This is a problem. Obviously we would like to have enough eligibility workers to correct this imbalance.

Now in other respects the Federal role and responsibilities are too limited. Federal responsibilities related to quality control are essentially limited to measuring errors and levying penalties. Given the fact that the administration of the AFDC program is a shared Federal-State responsibility, we think the Federal Government should play a more active role in error reduction and oversight of the corrective action process.

From its national vantage point, the Federal Government is in a unique position to assist States in devising cost-effective corrective actions. Federal technical assistance in this area, however, has traditionally been limited to technology transfers designed to enable one State to share its expertise with another. While this is helpful, it is far from adequate. And, while we appreciate the efforts taken by HHS to study corrective action strategies, we do not believe the Touche Ross study generally provides us with any new wisdom, or tools.

A great deal needs yet to be learned about corrective actions and error reduction methods. Yet HHS has traditionally rejected recommendations to study this area. In its partnership with the States, the Federal Government should make the full range of its expertise available in helping States to find the best means of error control. The Federal Government, I might add, can also help to reduce errors by minimizing frequent policy changes and seeking ways to simplify policies that make the AFDC, Medicaid, and Food Stamp Programs more complex.

As I mentioned earlier, the State administrators believe Representative Matsui's bill, H.R. 1279, would remedy most of the problems which I just summarized.

I will not go through each of the provisions of the bill, but I would like to say that we believe the reforms in this bill will help fulfill the States' and Federal Government's aim of maintaining accountability in the expenditure of Federal funds in the AFDC program without endangering our ability to sustain the program.

Under current sanction policies in AFDC, States face the loss of millions of dollars over the next few fiscal years. Despite whatever budget surpluses may exist at the moment in a few places, we can see no way that the vast majority of States will be able to absorb a loss of this magnitude with impunity. Nor would they have to if quality control policies are made fair and reasonable, which is what Mr. Matsui's legislation seeks to do.

Congressional attention frequently focuses narrowly on the estimated costs of legislative reforms; this becomes the bottom line. We believe it is critical in this instance to also consider the substantial costs of failing to make reforms. Heavy fiscal sanctions pose a serious threat to the integrity of State programs. They give the appearance of being nothing more than a backdoor approach to reversing the long-standing Federal financial commitment to the AFDC program. As a result, States may well be forced to eventually cut back the services and benefits they provide to needy families. Given the fact that the purchasing power of AFDC benefits has already fallen 37 percent when adjusted for inflation since 1970, we think every effort should be made to avoid such a consequence. We will do our best to do so, but we need your help.

This concludes my statement, Mr. Chairman. I would be happy to answer any questions.

[The prepared statement follows:]

STATEMENT OF JAMES L. SOLOMON, COMMISSIONER, SOUTH CAROLINA DEPARTMENT OF SOCIAL SERVICES, ON BEHALF OF THE NATIONAL COUNCIL OF STATE HUMAN SERVICE ADMINISTRATORS

Mr. Chairman, and members of the Subcommittees thank you for this opportunity to appear before you to discuss the pressing need for reform in the AFDC quality control system. I am James Solomon, Commissioner of the South Carolina Department of Social Services. I am pleased to be here today on behalf of the National Council of State Human Service Administrators to represent our views on quality control.

The present AFDC quality control system produces neither an accurate nor an equitable measure of state performance. Nonetheless, it is used to assess millions of dollars in fiscal penalties against the states. Unless reformed, the quality control system will serve only to undermine state efforts to make the AFDC program work the way the public wants it to—fairly and efficiently. Instead of strengthening the AFC program, punitive fiscal sanctions may well force states to curtail benefits as well as the very administrative improvements needed for error reduction. These results of course are the reverse of what the quality control program is supposed to accomplish. And they are exacerbated when you consider that the same quality control problems exist in the Medicaid and Food Stamp programs. As a matter of both social and fiscal policy, the system must be changed.

The states realize that the quality control issue is both complex and controversial. We also recognize that given broader policy concerns such as the federal budget, quality control reform may not be viewed as the most politically salient or pressing matter on the congressional agenda. Nevertheless, we believe it is an issue that must be dealt with soon if serious repercussions are to be avoided in the operation of public assistance programs.

We applaud the leadership your committee has taken in efforts to objectively evaluate the complexities of the AFDC quality control system to determine if improvements can be made. We are confident that you will conclude, as we have, that there are significant flaws in the current system which warrant correction.

The state human service administrators want especially to thank Mr. Matsui for introducing H.R. 1279, the AFDC Error Reduction and Quality Control Improvement Act. The reforms recommended in Mr. Matsui's bill would make numerous improvements required to achieve fairness and accuracy in the requirements governing AFDC quality control procedures. We are pleased to join the National Governors' Association and the National Association of State Budget Officers in endorsing this important piece of legislation.

STATE COMMITMENT TO ERROR REDUCTION

Let me stress at the outset that the states, no less than the federal government, are committed to the concept of quality control. They want to ensure that limited public assistance funds go only to recipients who meet the eligibility requirements. We believe our performance, as well as the substantial investment we have made, and continue to make, in error reduction efforts, reflect this commitment. In the past decade, states have made tremendous strides toward cutting their error rates.

As you know, the national AFDC error rate dropped more than 50 percent—from 16.5 percent to 7.3 percent. According to HHS's own data, the error rate is expected to further decline to 6.1 percent by the end of this fiscal year. We reject the claim continually made by the federal government that stringent fiscal sanctions and quality control policies have been responsible for this progress. We find Secretary Heckler's notion that "states' feet must be held to the fire" in order to induce them to cut errors completely unfounded.

States have ample incentive to achieve the highest possible level of AFDC payment accuracy, since mispayments waste state as well as federal resources. How else would it have been possible for us to cut the AFDC payment error rate in half during the past decade? It took a considerable investment on the part of the states to achieve this level of performance, and it occurred during a period in which no fiscal sanctions ever had to be levied. It is the states' investment in efforts to improve program management and reduce errors that most accounts for the decline in the error rate.

States are employing numerous error reduction techniques and corrective action measures to further curtail errors. In a survey conducted earlier this year by the American Public Welfare Association (APWA), in which 44 states responded, APWA found that the states are actively implementing targeted corrective actions linked to effective error control.

The survey found, for instance, that over 90% of the states require verification of monthly earnings information, have implemented an enumeration agreement with the Social Security Administration (SSA), and perform selective second party case reviews to detect mistakes before they become sanctionable errors.

It also revealed that over 70% of the states perform both batch and on-line wage matches to monitor income, use computer edits to monitor social security numbers (SSNs), provide investigative interview training to eligibility workers, employ intensive second party reviews, and provide enhanced supervisory training.

In addition, over 50% of the states were found to have enhanced school attendance verification, added clients receiving contributions to mandatory monthly reporting, strengthened monitoring of continued absence, and instituted regular and comprehensive reviews of local office efficiency.

These illustrations represent only a sample of the initiatives now being undertaken by the states. All of them have been deemed by a private consulting firm, which conducted a study of the cost effectiveness of corrective actions for HHS, as effective error reducing techniques.

The bottom line is that states are investing heavily—their time, energy, staff and money—in the very corrective actions HHS believes are needed.

While it is difficult to identify the exact amount of money states invest in corrective action, it is fair to assume that millions of dollars are spent by the states each year in efforts to combat errors. The survey data collected by APWA indicates that states are devoting up to a fifth or more of their total administrative funds annually on corrective actions.

We will continue to make the investment necessary to minimize errors and to explore more effective means of error control. State commitment alone, is not enough to assure continued progress. Further error reduction depends—not on subjecting states to arbitrary and punitive penalties—but on restoring confidence and reliability in the quality control system to make it truly a useful management tool.

I want to emphasize one additional point before discussing the specific flaws and reforms in the present quality control system. The states do not object to being held accountable. We recognize that accountability is critical to effective management of the program. What we do oppose is the arbitrariness of the present system, which haphazardly measures errors and penalizes states for those errors years after they were supposedly committed. Obviously, the prospect of losing federal funds is not one that any state finds attractive. The states, however, are not asking to be exonerated, only to have their performance measured against a fair and reliable system. Any legitimacy of sanctions depends on their being reasonably related to an accurate determination of payment errors over which the states have control. It is one thing to penalize based on fair and statistically sound procedures and quite another to do so using a process that is clearly inequitable, unreliable, and of little value in facilitating better management, as is now the case.

PROBLEMS WITH CURRENT QUALITY CONTROL SYSTEM

I would like to outline for you the problems with the present quality control system.

1. Error rates are inflated and serve as an unfair basis for penalties

Paperwork omissions are counted as errors.—Under the present system, the states are penalized for technical or paperwork errors as well as actual errors. For instance, AFDC payments to a family entitled to receive them may still be counted as erroneous under the quality control system if a child's social security number or information regarding a recipient's registration for the Work Incentive (WIN) program was not included in the case file. Current quality control procedures require that these technical errors be counted to the same extent as errors that occur when a family is mistakenly granted eligibility—an illogical federal practice best portrayed by the following example:

A young woman with 2 children receives AFDC as the sole source of support for her family. When her case is reviewed by quality control, it is discovered that one of her children lacks a social security number. Under the current system, the payment to the family is considered erroneous because of the missing social security number, and the state is penalized. Once the social security number is obtained, payments continue to be made to the family, but the case remains an error for sanction purposes. Take another family in similar circumstances, except that the mother works and chooses not to report her earnings for a period of time. This case is picked up by quality control and found to be in error as well. The state is penalized in both cases, although one family is clearly eligible while the other is clearly ineligible and intentionally abusing the welfare system. A technical error involving no actual mispayment is given the same weight as an error involving paying benefits to an ineligible family.

While we agree that it is important to monitor and correct such erorrs, states should not be held fiscally accountable for errors that do not entail real mispayments. Paperwork omissions—which have little if any direct fiscal consequence—are an unfair basis for assessing millions of dollars in penalties.

We believe the federal government's claim that such omissions have a substantial effect on eligibility and payment amounts is greatly exaggerated. The example typically given is that a social security number omission could result in the failure to uncover excess resources in a bank match. While such cases may exist, they are undoubtedly limited. Surely, in a program targeted to low-income children, few social security numbers will lead to the discovery of unreported bank deposits. States will continue to be diligent in securing social security numbers and documenting other eligibility requirements; there is simply no good reason for imposing fiscal sanctions to assure that this task gets done.

Client-caused errors are weighted as heavily as agency errors.—A considerable portion of the errors made in the AFDC program represents situations in which clients have failed, either inadvertently or intentionally, to provide the welfare office with accurate or complete information needed to determine eligibility and payment amounts. States are limited in their ability to control or prevent these errors.

Consequently, we believe client-caused errors should not be treated the same as agency-caused errors in determining fiscal penalties. More needs to be learned about the extent to which client errors can be controlled.

Error rates are not adjusted to compensate for the shortcomings of sampling.—Quality control examiners analyze only a small number of sample cases. For that reason, they can only establish the probability range within which a state's error rate falls. They cannot determine the true ratio of error. The reasonable way to deal with this limitation would be to set the official error rate for the state at the lower boundary of the probability range to eliminate the risk of overestimating it.

Rather than use the lower end of this range—known as the confidence interval—to avoid inflated penalties, however, HHS employes the mid-point or point estimate. Although the federal government claims the figure is universally accepted as the best estimate of a state error rate, that is hardly the case. A panel of the National Academy of Science, in a report on statistical issues in family assistance programs, recommended that the federal government use the lower bound of the range in determining fiscal sanctions in order to reduce the chance of incorrectly classifying a state. The General Accounting Office has also suggested that existing statistical procedures may overestimate the extent of error. Furthermore, the validity of using the lower end of the confidence interval is increasingly being recognized in other areas. For example, the Internal Revenue has determined that the lower bound of the confidence interval should be employed for the purposes of sampling-based tax adjustments. Ironically, in recognition of this fact, back in the mid-70's HEW itself had issued program instructions requiring the department to use the lower bound of the confidence interval in determining states' error rates and the resulting federal disallowances, if any.

More recently, HHS has argued that the lower bound of the confidence interval should not be used because states will conduct inaccurate reviews in order to widen the interval and, thus, lower the boundary. This assumption is not based on any evidence whatsoever of states gaming the system; it is purely hypothetical. There is no rational basis for assuming that states would or could engage in such a complex and systematic effort to manipulate the system.

2. The error rate tolerance level is an unrealistic performance standard.

The complexity and intricacy of AFDC go unrecognized.—The current 3 percent error rate tolerance level is an unrealistic standard given the complexity of the program and the difficulty in accurately measuring errors. As one of the most complex endeavors of the public sector, AFDC is inherently prone to some level of error. Eligibility workers must examine a myriad of factors to determine eligibility and benefits under severe time constraints. Federal quality control reviewers, on the other hand, review only a small percentage of AFDC cases over a much more extended period of time and with the benefit of the results of the state's own quality control review. In effect, states are penalized for failing in their regular determinations to perform at the level achieved by federal reviewers.

Despite the considerable investment made by the states to reduce errors, only 1 state has been able to achieve the 3% standard for more than a year and a half and only 2 other states have been able to maintain an error rate below 4% for the same length of time. The reasonableness of this tolerance—given states' experience and the effort that has already been made in corrective action—clearly must be questioned.

External factors that contribute to high error rates are not taken into account.—Some states are more prone to errors for reasons that have nothing to do with agency effort. An unpublished HHS study indicates that program variations across states can significantly affect error rates. The study notes, for example, that factors such as greater population density, high crime rates, size of the welfare agency's caseload, the percentage of cases with earnings, and the existence of an unemployed parent program contribute to higher error rates than would otherwise be expected. These factors, however, are not considered in assessing performance or in determining fiscal penalties, under the present quality control system.

As long as such factors—largely outside the control of the states—are known to significantly influence the extent of error, the states believe steps should be taken to appropriately consider them in determining error rates and fiscal penalties.

4. Federal quality control procedures are inequitable and inefficient

Insufficient quality control standards exist for the federal government.—The federal government, unlike the states, is generally not bound by any timeframes or standards in carrying out its quality control responsibilities. As a result, federal decisions are not made on a timely basis and oftentimes are arbitrary.

HHS has been inordinately slow in releasing final error rate data to the states and in notifying states of decisions with regard to their "good faith" waiver requests. The department did not release the AFDC error rates for the FY 81 period until March 1983, 18 months after the fiscal year had ended. Worst yet, the department has still not released the data for FY 82 despite all of the assurances it has made over the last couple of years that efforts were being undertaken to improve federal procedures to ensure more expeditious release of data. These federal delays have handicapped the states' ability to plan and implement effective corrective actions. The department's handling of states' requests for waivers of penalties pending for FY 81 was also characterized by delays—states were notified of the department's decisions nearly 2 years after submitting their requests. More importantly, this situation illustrates the arbitrariness of the administration's approach to quality control. In one of the more blatant examples of capricious federal decision-making, HHS decided to deny certain states' waivers because they failed to make adequate progress towards their error rate targets. This occurred despite the fact that the states successfully demonstrated they had made a sufficient "good faith" effort when evaluated against HHS' own "Weights and Factors". Based on the failure to achieve this so-called adequate progress, 5 of the 11 states that the department determined met the "good faith" review criteria were denied waivers. We object strongly to denying states waivers based on an "error rate progress" criterion that is neither authorized in statute nor in regulations. The entire purpose for permitting states to submit waiver requests, as we understood congressional intent, is to give states the opportunity to show why they did not make appropriate progress towards their targets despite good faith efforts. Given HHS' approach, it was futile for Wyoming, Florida, Idaho, Tennessee and Colorado to submit waivers because the

merits of these states' demonstrated efforts were in the end considered inconsequential.

This type of arbitary decision making, coupled with the prolonged delays in releasing error rate data and making waiver decisions, undermine whatever positive value the quality control program may have.

The Federal role and responsibilities are too limited.—Federal responsiblities related to quality control are essentially limited to measuring errors and levying penalities. Given the fact that the administration of the FDC program is a shared federal/state responsibility, we think the federal government should play a more active role in error reduction and oversight of the corrective action process. From its national vantage point, the federal government is in a unique position to assist states in devising cost-effective corrective actions. Federal technical assistance in this area, however, has traditionally been limited to technology transfers designed to enable one state to share its expertise with another. While this is helpful, it is far from adequate. And, while we appreciate the efforts taken by HHS to study corrective action strategies, we do not believe the study I mentioned earlier generally provides us with any new wisdom, or tools.

A great deal needs yet to be learned about corrective actions and error reduction methods. Yet HHS has traditionally rejected recommendations to study this area. In its partnership with the states, the federal government should make the full range of its expertise available in helping states to find the best means of error control. In addition, the federal government can help to reduce errors by minimizing frequent policy changes and seeking ways to simplify policies that make the AFDC, Medicaid and Food Stamp programs more complex.

In sum, the current quality control system is permeated with fundamental deficiencies that must be corrected. As now constituted, the system threatens to damage rather than improve the quality of the program.

SOLUTION

As I mentioned earlier, the state administrators believe Representative Matsui's bill, H.R. 1279, would remedy most of the problems which I just described. Put simply, accurate and efficient procedures to measure errors are needed, and the arbitrariness of quality control and fiscal sanctions policies must be minimized. H.R. 1279 makes the changes the state administrators believe are needed to accomplish these ends. Let me turn now to a discussion of some of the specific solutions included in H.R. 1279.

Accurate and efficient procedures to measure errors

Establish standard quality control procedures.—Quality control procedures would be standardized so that state and federal quality control reviews are conducted within similar timeframes and following the same audit standards. HHS would be required to notify states of the official error rates within 6 months after the state sample is submitted. This would ensure that states receive information on errors on a more timely basis. States would be responsible for submitting corrective action plans to HHS for review and approval. This would not necessitate the federal prescription of specific corrective action measures; it would simply require HHS to develop reasonable, objective criteria for corrective action plan approval. So long as the department is going to be setting standards for the states and making determination regarding what are appropriate state corrective action strategies during the waiver process, we believe it should be similarly involved at the initiation of the corrective action process and held accountable for its decisions.

Finally, procedures for granting states good faith waivers are spelled out in the bill. Given HHS past performance with regard to reviewing these requests, we believe it is critical that standard procedures be set in law to ensure federal decisions are made fairly and soundly.

Calculate the error rate using the lower bound of the confidence interval.—The error rate computed for a state would be the lower boundary of the error rate range produced by sampling procedures. This would eliminate the risk of overstating a state's error rate and imposing higher-than-warranted sanctions. As long as fiscal penalties are tied to error rates, fairness requires such an adjustment.

Minimizing the arbitrariness of fiscal sanctions

Exclude technical errors.—Technical errors, those procedural mistakes that do not involve actual mispayments, would be excluded from the error rate calculation used for fiscal penalties. H.R. 1279 would not exclude consideration of technical errors in the quality control review process, however. The errors would continue to be identified and counted for management purposes so tht states can continue their efforts to

control such errrors, but they would not be inclued as part of the payment error rate. This is the same procedure Congress already mandates in the Medicaid program.

Establish reasonable standards of performance.—States will continue to strive for lower errors regardless of the national tolerance level—our large financial stake in the program requires us to. However, as long as the federal government chooses to impose fiscal sanctions based on quality control performance, it is critical that reasonable and accurate standards be set. H.R. 1279 does not relax federal standards, it makes them realistic. The bill would establish a 4% error rate tolerance and permit adjustments in recognition of the fact that certain factors make some states more prone to error. States would still be held accountable—and thus, would still have to pay sanctions—for failure to meet the required standard. As stated earlier, we have no objection to being held accountable if quality control procedures can be made reliable and realistic.

One other important aspect of Mr. Matsui's bill is that it would require a study of broader performance measures. The existing quality control system measures only one aspect of program performance, payment accuracy. This exclusive emphasis on payment accuracy distorts the aims of AFDC and actually may deter states in some cases from making needed program improvements because they want to avoid the risk of increased errors associated with such improvements. While payment accuracy is extremely important to effective management, other program goals are equally important. HHS' efforts thus far to develop broader performance measures fall short of what is needed. Although an advisory group has been charged with the responsibility of developing alternative measures, this group meets only twice a year and it does not seem to command the kind of attention other issues related to quality control—namely fiscal penalty determinations—receive from the department.

The state administrators believe these reforms, proposed in H.R. 1279, will help fulfill the states' and the federal government's aim of maintaining accountability in the expenditure of federal funds in the AFDC program without endangering our ability to sustain the program.

THE COST OF REFORM

Under current sanction policies in AFDC, states face the loss of millions of dollars over the next few fiscal years. Despite whatever budget surpluses may exist at the moment in a few places, we can see no way that the vast majority of states will be able to absorb a loss of this magnitude with impunity. Nor would they have to if quality control policies are made fair and reasonable, which is what Mr. Matsui's legislation seeks to do. Congressional attention frequently focuses narrowly on the estimated costs of legislative reforms; this becomes the bottom line. We believe it is critical in this instance to also consider the substantial costs of failing to make reforms. Heavy fiscal sanctions pose a serious threat to the integrity of state programs. They give the appearance of being nothing more than a backdoor approach to reversing the long-standing federal financial commitment to the AFDC program. As a result, states may well be forced to eventually cut back the services and benefits they provide to needy families. Given the fact that the purchasing power of AFDC benefits has already fallen 37% when adjusted for inflation since 1970, we think every effort should be made to avoid such a consequence. We will do our best to do so, but we need your help.

This concludes my statement, Mr. Chairman. I'd be happy to answer any questions.

Mr. MATSUI. Thank you very much.

I would like to ask a question.

I believe Ms. Ross made the statement that technical errors could result in loss of money to the Department, to the Federal Government, and local and State agencies.

In your experience—and let me, if I may, just ask you a preliminary question—you are the director of all the welfare programs in the State of South Carolina?

Mr. SOLOMON. That is correct. I have had this responsibility for about 2 years.

Mr. MATSUI. You are involved in management of these operations?

Mr. SOLOMON. Yes, sir.

Mr. MATSUI. Technical errors, such as if a person, as you mentioned, errors in the social security number, for example, is it likely that that person is attempting to avoid the case worker from finding out about hidden assets? Is that the normal situation?

Mr. SOLOMON. No, our experience does not indicate this. There could be instances where not having a social security number could result in a mispayment, but by and large we have found in our experience that this is not the case.

Mr. MATSUI. The technical errors as defined in our legislation then, by and large, do not have a fiscal impact. Is that what you are saying?

Mr. SOLOMON. There may be some technical errors that do have a fiscal impact, but the majority don't. It is simply our position that technical errors which do not have a fiscal impact ought not to be weighted the same as technical errors which do.

Mr. MATSUI. If a definition could be defined, those errors that result in revenue loss would be excluded from the legislative definition of technical errors, you have no problem with that?

Mr. SOLOMON. No problem with that.

Mr. MATSUI. That might be an area that we can refine and improve upon.

In terms of the issue of accountability, in your experience, if, in fact, we pass the legislation H.R. 1279, do you feel that there would be more accountability or would it be better under the current circumstances?

How would you make the distinction?

Mr. SOLOMON. I don't think we will have more accountability if we stay with the present system. As a State commissioner, involved almost on a day-to-day basis with other State commissioners, I know the commitment of States to reduce errors.

I might add, Mr. Chairman, that we come under the scrutiny of our own general assemblies each year, or every 2 years, when we go before them with our budget requests. The inquiries that are made of us, and the performance standards that we must indicate for our own general assembly, are no less demanding than those of the Federal Government.

The commitment is there, both in the general assemblies and at the administrative levels. We will maintain that commitment. We need some help, however, because under the present system attempting to maintain this commitment can be undercut by the sanctions that we will encounter.

Mr. MATSUI. Now, in terms of stability, Ms. Ross indicated that they will be coming up with their new criteria in another 4 weeks. How does that hinder or help your ability to administer your program?

Mr. SOLOMON. Certainly we will be interested in seeing this criteria. The fact that we have not in the past, reviewed such criteria has been a problem.

Mr. MATSUI. The fact we just received last October the 1981 actual error rate numbers officially, and also the sanctions and the waivers, how does that deal with the word "accountability"? It seems to me that here you are talking about 4 years later.

Mr. SOLOMON. Too much time elapses between the time errors may be made and the time the error rates are established and pub-

lished by the Department. In South Carolina we operate on a fiscal year basis. Any sanctions that we might get therefore, would negatively affect our current operation. In South Carolina we were fortunate, we were not sanctioned for 1981. We were granted a waiver. Naturally we are very pleased. We worked very hard for this waiver and are continually working to bring our error rate down.

If we had not been granted a waiver, $1,004,000 would have had to come out of my 1985-86 budget. We are implementing an unemployed parents program and doing a number of other things to try to improve our program. A sanction would have undercut all of the things that we are currently trying to do.

Mr. MATSUI. In other words, for the Federal Government to go back to 1981 and penalize you in 1985 for 1981 errors, when you were not even there, does not appear equitable?

Mr. SOLOMON. It does not appear equitable. We hope that it does not happen.

Mr. MATSUI. I have a couple of questions for Mr. Richman.

You indicated that the purpose of quality control is for management—a management tool.

Could you please get into a little more detail on that in terms of what you mean?

Mr. RICHMAN. As the program was originally constructed, it was designed to help States identify management problems in the administration of public assistance programs and to develop responses to correct those identified problems. It was a very important aspect of the program, which we continue to support.

States have, over the years, identified problems in the administration of these programs and, at our own initiative, have undertaken actions to correct those problems. We have spent a considerable amount of money over the past 10 years, in the hundreds of millions of dollars, to install computer systems, improve procedures, and to increase administrative staff so that we might make the administration of the programs more efficient and keep the error rates down.

Mr. MATSUI. The prior witness talked about a 16.3-percent error rate in 1973. Could you give me your opinion as to why the error rate was so high then?

Mr. RICHMAN. Well, I think that the error rate actually was 16.5 percent in 1973, down to an estimated 7 percent in 1982, which is a 58-percent improvement. I just think that the level of sophistication in administering the programs has increased dramatically over the years.

The added advantage of computer technology—many States have moved to install computerized systems—has helped immensely, especially in the larger States. In New York, for example, we are just completing installation of our welfare management system, and we have spent over $135 million in doing that. It is the largest system of its kind in the country. I think, clearly, as States move to improve the level of administration, the error rate will come down.

Back in 1973, the experience with these programs was not what it is today; and States, they were not doing as much, frankly, back then.

Mr. MATSUI. One more question.

You mentioned the variables, geography and the density of the population in particular areas. You are the budget expert of New York. How important is that in terms of the whole issue of quality control? Albany NY, may be different from the city of New York in terms of ability to detect errors and come up with a system?

Mr. RICHMAN. In talking to the social services people in New York State and our Social Services Commissioner, Cesar Perales, and his staff, and the people in the Human Resources Administration in New York City, I just believe—I am not out there administering the programs directly, but after years of being involved with these programs, I am firmly convinced that those kinds of problems are—they are clear. They are clearly evidenced and supportable.

You cannot look at a program in New York City and compare it to a program, for example, in other portions of our State, in upstate New York, or in other States where there is a caseload of 6,000 or 7,000 and look at New York City where there is a caseload of about 300,000 families and believe that it's as easy to administer those two programs.

The issues of density and poverty and household size, number of household members with earned income, for example, all contribute heavily to the payment error.

Mr. MATSUI. For any system not to consider those differing criteria or variables doesn't help in terms of management tools?

Mr. RICHMAN. It is not realistic and doesn't make sense. To restore some credibility to this program, we need to be talking about systems that are realistic, that are fair. The current systems are not.

Mr. MATSUI. Thank you. I have no further questions.

Mr. CAMPBELL. Let me ask just a couple of questions. I appreciate the testimony of both of you.

There are some things that do concern me, and I think the suggestion that there are different types of technical errors that we can work to refine—you will find us looking at it.

I do have a little bit of concern, though. In your position paper from the National Association of State Budget Officers, you point out that one of the things that you do, and have done, to take corrective actions is to use data matches involving wages and other benefits programs, and so forth.

How can you do data match if you have an error when you didn't get the Social Security number or the input to begin with? It seems to me that you can't very well do that unless you have the information from the beginning in order to match.

Mr. RICHMAN. That is right.

Mr. CAMPBELL. That would not be a technical error but a substantive error?

Mr. RICHMAN. As I understand the findings in the technical error area, many of the so-called technical errors are lack of a Social Security number of a child, for example. You don't need a Social Security number of a child to do a data match to see if there is earned income.

Mr. CAMPBELL. Social Security benefits?

Mr. RICHMAN. With respect to families and adults that have potential for unearned income, a Social Security number might be more relevant.

Mr. CAMPBELL. Children have that potential, too?

Mr. RICHMAN. In many cases, we are talking about very small children.

Mr. CAMPBELL. All I am asking is, how do you verify it?

Mr. RICHMAN. It becomes much more difficult to do that verification.

Mr. CAMPBELL. It is important to get the correction information in order to utilize the tools that you have in place to make these matches.

Mr. SOLOMON. We would never argue that we should not get the Social Security numbers. We do make every effort to, and we ought to continue to do that.

What we argue is, if there is a situation where the Social Security number of a child is not secured, and that does not result in a overpayment, the case should not be counted as an the error we are going to be sanctioned for.

Mr. CAMPBELL. I understand that.

What percentage of your overpayment do you collect back once it is made?

Mr. SOLOMON. We collect an awful lot.

Mr. CAMPBELL. I know you do a pretty good job.

Mr. SOLOMON. Yes, we do a good job of it. Our solicitor in Richland County had somebody indicted the other day that had an overpayment of less than $5. The solicitors in South Carolina, and throughout this country, I believe, are serious about fraud and overpayment, and we are very aggressive in our efforts to address this problem. Yet, we have to be just as aggressive in making sure that clients that are eligible, and need benefits, get them.

Mr. CAMPBELL. My concern with this goes back to the midseventies before Mr. Solomon was there at our department of social services, where we had some very severe problems, as did many, because of enormous errors and everything else. And at a time when we were first trying to bring on line computer systems, the biggest problem we had was getting the necessary data—because a computer system is no better than what you put in it—and we had a tremendous problem with that and found it to be somewhat restricted in its use because of the fact that the people that were charged with getting the initial data didn't do their job.

If we are going to use modern tools, I want to recognize, and I am willing to differentiate between those types of technical errors that are really just a little paperwork thing that don't amount to a row of pins, and one that is substantive. But I have concern about an error of omission when you are denied the use of a tool or a cross-check in it.

What suggestions would you have?

Mr. RICHMAN. We agree technical errors should continue to be tracked and included in the QC system; no argument. Our concern is, where they don't contribute to an overpayment, that the States not be penalized for that. And the examples that Jim provided are relevant.

But certainly data collection is a problem. It is especially problematic in large urban areas where you have extremely high caseloads, and you have circumstances where case workers carry case-

loads of 50 or 100 or more. I don't know if you've been in some of those offices, I have, and they are tough places to work.

You go in there, and families are in crises. They are homeless. They require benefits immediately. And the case worker has a very short period upon which to make this determination, collect the documentation and turn it around.

In the Budget Office and here in Congress, we are very insulated from some of those real problems. And when you go out and look at that, as I know some staff members of this subcommittee have done—they went to New York City and went through some of our welfare centers that HRA operates; they came away with an appreciation of what life is like down there, and what a typical day is like. So I don't think we should overlook that reality.

Mr. CAMPBELL. I understand the reality, and I understand the tools that we have, and I understand that if we limit the use of the tools then we are going to have a potential for additional error in the payment.

You might never determine whether there was an overpayment if you left out the initial data.

Mr. SOLOMON. Yes; but we would not be eliminating the use of any error reduction tools.

Mr. RICHMAN. Well, we make an effort to—we have very sophisticated computer systems. We spend about $145 million a year in New York State alone on the administration of our public assistance programs. So, in terms of my concern with keeping the error rates down, believe me, I am extremely concerned.

My income maintenance budget in New York State is about $1 billion, and that is not including the administration of those programs—AFDC, general assistance, SSI, and some other programs. So we are spending a lot of money and we want our systems to be as sophisticated as possible and get our error rates down. And, in New York, which I am most familiar with, we brought that error rate down about 82 percent, we estimate, in 10 years. It was very high. It was much too high back in 1973; no question.

But as the level of consciousness has been raised, and the level of expenditures—one has a lot to do with the other—we have paid a lot more attention and invested significant additional resources into making sure that those error rates are down.

Mr. CAMPBELL. Mr. Solomon.

Mr. SOLOMON. Mr. Campbell, the kinds of problems that you mentioned a few moments ago that existed back in the seventies are a function, in part of the limited amount of training and expertise eligibility workers had then. And, I submit, sir, that the frequency, sophistication, and amount of training that goes on now in all the States with its workers has greatly improved and greatly increased.

In South Carolina, we implemented an automated Food Stamp system in 12 months. All 46 counties will be automated as of July 1. We are now moving to the implementation of a system which will include the AFDC program. The data that goes into these systems are good data. We think that the difference in the kinds of data going into the system now, and what was available in the past, is a function of the quality of training which our workers are now getting.

Mr. RICHMAN. One of the other things we are doing in conjunction with other States is helping to identify model programs across the country, and actually going out there and conducting site visits, holding conferences and meetings, both within the State and across the country, so that we can share information and so that we don't have to reinvent the wheel, so to speak, and implement what has been useful and worked elsewhere in other States.

I know this is going on in other States as well. We spend, by the way, in corrective action alone in New York over $11 million a year. So I guess I keep pounding away at those numbers because there is really a sizable investment, and when people talk about the need for sanctions, to incentivize States or hold over the heads of States to force them to get their error rates down, that is just not so.

The incentive is out there. We spend $7.5 billion on these programs, we have the incentive.

Mr. CAMPBELL. Since nothing was done until they started trying to pump these things, someone could start——

Mr. RICHMAN. But no sanctions were collected. I have been working in this area now since 1978 in my current position, and I have gone through a lot of budget seasons since then, and it is not until recently, the last year or so, that I have gotten concerned about the levying of sanctions.

So you know, all of the investments that we have made prior to that, our concern was getting the error rates down, we thought sanctions were something down the road, and we still think that they are down the road.

CBO believes nothing is going to be collected until 1988, but the incentive has always been there. You don't need the sanctions.

Mr. CAMPBELL. As long as they are down the road.

Let me switch to another subject. I have concern with trying to split up what is technical and what should be pretty well looked at, and I want to draw that out.

Let me ask you about this proposal that you have to take the lower end of the confidence level in determining what type of error you have.

First, I would ask you, do all States draw the same size sample, and is the confidence level the same on every sample that is done? Are they all different?

Mr. SOLOMON. There are some differences and some similarities.

Mr. CAMPBELL. You want to elaborate on that one for me?

Mr. SOLOMON. States can increase their sample size to improve the quality of their results. Remember now, that these samples are pulled by quality control workers with the employees of the State, so if you increase the sample size, you must increase the number of workers. This means I have to go to the General Assembly and get additional FTE's.

I would like nothing better than to increase my sample size, because it would give a better picture of performance. But fiscal constraints make this difficult.

Mr. CAMPBELL. The reason I ask this question, when you come in proposing to operate at the lower end of a confidence level, and X State has a sample, a small sample over here, and they might be at a 90-percent level, they might be plus or minus 10 on this thing, Y

State over there has a larger sample and a better sample, they may be plus or minus five.

That is the reason I am asking this, because when you propose to go at the low end of one, I see some possibility of some pretty dramatic variation here.

Mr. RICHMAN. I believe that the sample size is controlled by DHHS.

Mr. CAMPBELL. I don't believe that is the case.

Mr. SOLOMON. There are minimum sample standards. There is a probability range. When I said that there were not alternatives, I meant that there are minimum sample standards.

Different States may be at different points on the range.

Mr. CAMPBELL. Minimum sample size, generally what is the confidence level?

Mr. SOLOMON. I can't answer that for you, sir.

Mr. CAMPBELL. There would be a difference in them? There would be a difference if we had 1,000 samples versus 120?

Mr. SOLOMON. I think I would agree with that, but I'd like to mention something. Other agencies of the Federal Government are using the lower level of the interval. I mention this kind of tongue-in-cheek, but it is my understanding that the IRS has detemined that the lower bound of the confidence interval should be employed for the purpose of sampling based tax adjustments.

And I think that back in the seventies, HEW itself issued instructions requiring the Department to use a lower bound of the confidence interval.

Mr. CAMPBELL. I am not going to argue the middle or the lower, if we are dealing with standard samples and a set confidence level. What I would worry about is if you have options to go up or down in a sample, if we have a little different confidence level, and if one State is doing something different from the other, that gives me some concern.

Mr. SOLOMON. In South Carolina we have just developed a computerized process which enables us to pinpoint errors at the worker level, the group level and the county level. This process looks at the kinds of errors and who is making them. If a worker is making them, we know it. If the supervisor is not rereviewing the cases, we know it. And, when we annually evaluate the performance of those persons, this is taken into consideration.

Now, I cite that as an indication of the commitment in South Carolina to address error rates, and I know that other States are doing similar kinds of things.

Mr. CAMPBELL. I agree with you. I just go back to this same point. If we are going to start, or if we have this much variance and you are suggesting that we operate at the lower end, there tends to be some more of a balance, if you have different samples and you are plus or minus 10, or 90 percent level or 95-percent level or whatever it happens to be, there tends to be some balance by seeking the median or the middle in your situation, in any situation, whereas if you either go to the top or the bottom, you are going to skew it that much more.

If we are going to look in that direction, all I am asking you is, shouldn't we have some standardization of this? Shouldn't we have

some set samples? Shouldn't we be able to get to a confidence factor of X?

Mr. SOLOMON. That might be a desirable thing to do, Mr. Campbell, but if the results are going to be skewed as they are now, then I would hope they would be skewed the other way.

Mr. CAMPBELL. They may be. I don't think they are, but they may be, but this is a recommendation that you made, and since it is a recommendation that has been made, and that you have staked out, I am trying to find out for my own information, what the different 50 States or the territories are using, what type of confidence level do they have.

Are we treating one different from the other, and is seeking the middle, is that the way we are trying to balance, and if we are going to change it, don't we need to change the formula?

Mr. RICHMAN. Regardless of the sample size, the confidence interval is always 95 percent in all cases, that is what I understand the policy is, but the key question here or the key issue for us is that, we are coming up with an estimate of an error rate.

We cannot be precise about what that error rate is and where an estimate is being used to levy fiscal sanctions, I think to avoid the instance where the States are being oversanctioned or sanctioned for errors that they did not commit, to provide some benefit of the doubt by using the lower bound of the confidence interval, it seems more equitable.

Mr. MATSUI. Mr. Campbell, will you yield for a minute?

Mr. CAMPBELL. Well, the only thing I wanted to make sure we are back on the same track again, you said 95-percent confidence level, but it is within the range of what is set and the range can be different, so I am really looking at a range in this, and I was using your words and your terminology, but that is a concern to me.

And yes, Mr. Matsui, first, before I yield back, I would like to thank both of you for being here. I know that both of you are interested in the problems that we are facing. I know that you are seeking solutions, and we want to work with you to try to find some solutions.

By the same token, we also have to be very guarded of the Federal money in the programs that we work with. Mr. Matsui does have legislation introduced, and as you know, and as you discussed, I do not find myself in agreement with all of that legislation.

I also, as Mr. Solomon said a while ago, I also don't find myself in disagreement with all of that legislation, so I think we may have some area to work in. But no matter what we work out, our job, as we see it, and I am sure you see yours, is to administer the program as effectively and efficiently as you possibly can, and we would hope that everybody out there is as conscientious as you are.

The only thing we have to judge on is past experience, and so I hope we can hit some solution to this.

Mr. MATSUI. Thank you, Mr. Chairman, I would like to thank both of you gentlemen for taking the time to come to Washington and testify before us.

I would just like to say, your testimony is very valuable in terms of our record, because I think you have demonstrated that the States and local governments certainly are making a good-faith

effort to reduce that error rate and so, it is a cooperative effort between the States and the Federal Government.

I look forward to working with you as does Mr. Ford in the next few months to see if we can put this legislation together.

Mr. MATSUI. Thank you.

[Whereupon, at 1:35 p.m., the hearing was adjourned.]

[Submissions for the record follow:]

STATE OF INDIANA,
DEPARTMENT OF PUBLIC WELFARE,
Indianapolis, IN, June 21, 1985.

Hon. HAROLD E. FORD,
Chairman, Subcommittee on Public Assistance and Unemployment Compensation.

MR. CHAIRMAN: We appreciate this opportunity to submit for your consideration our testimony in favor of Representative Matsui's proposed legislation "AFDC Error Reduction and Quality Control Improvement Act: H.R. 1279". It is our sincere belief that this legislation represents an earnest and comprehensive attempt to make Quality Control for the AFDC Program timely, equitable, and cost effective.

The Quality Control System, as it exists today, is fraught with inequities and inconsistencies, such that its overall effect on states is punitive and counterproductive. It is not uncommon, indeed it is the norm, for states with lower error rates to suffer more severe fiscal penalties than those states whose error rates are considerably higher. Indiana, for example, in FY 1981, had a payment error rate of 4.1%, only .1% over our tolerance level of 4%. For this, we are currently being threatened with a $113,000 sanction. The District of Columbia, for the same fiscal year, had a payment error rate of 15.1%; however, as their tolerance level was 16.31% no sanctions were imposed. Clearly, the present system is inequitable in both its standard setting and its levying of fiscal sanctions.

H.R. 1279 seeks to correct these inconsistencies, first by setting a reasonable tolerance level of 4% for all states, then by allowing that level to increase to as much as 5.5% based upon inherent differences on state population, program comprehensiveness and caseload composition. Further, the amount of sanctions imposed would be closely related to the states' actual and proposed corrective action efforts, as well as to any mitigating circumstances, such as natural disasters or strikes by state employees.

Another major concern with the present system is the way in which states' error rates are determined. As Quality Control data is gathered from a random sample of AFDC cases, the true error rate is unknown; sanctions are based upon the arbitrarily chosen mid-point of the statistical confidence interval. As a result, states may be penalized for a greater number of errors than were actually committed.

We must object to this procedure as it leads to the unnecessary loss of state dollars in an era in which accountability to the taxpayer is of utmost importance. Representative Matsui's bill would amend state error rates to the lowest point on the confidence interval, thus ensuring that states are penalized only for those errors that actually exist.

Perhaps the most unreasonable aspect of current error rate determination is the inclusion of technical discrepancies and client-caused errors. Technical discrepancies include failure of the agency to obtain a client's Social Security number, to register a client in the WIN Program, or to see that an Assignment of Support is completed on each absent parent. These are paperwork errors, the resolution of which make the client eligible, rather than ineligible, for assistance. It is our strong contention that such discrepancies, which do not cause actual misspent dollars, should be disregarded in the determination of error rates.

H.R. 1279 recognizes the incongruity of including technical discrepancies in the states' error rate determination. It does, however, address the issue of such discrepancies by mandating that states which exceed the 4% tolerance level submit a corrective action plan for all identified errors. Thus, states are encouraged to correct such errors without suffering unwarranted fiscal penalties for them.

Client errors are those which occur because the client inadvertently or deliberately failed to provide that information which would lead to the correct determination of assistance benefits. These errors comprise a substantial portion of those cited in high-risk and complex areas, such as earned income. Because of their very nature, these errors can be virtually impossible to detect at the time assistance is granted, and are non-responsive to regular corrective action procedures.

In FY 1981, 25.39% of Indiana's total payment error rate was due to discrepancies in the budgeting of earned income. Of these errors, 58% were client caused. In considering only one element of eligibility, then, we see that approximately 14% of the total errors cited were due to client failure to provide required or correct information concerning their earned income. When considering all elements of eligibility, that figure rises to 43%.

It is inconceivable to us that current regulations place equal emphasis on client and agency-caused errors. Clearly, client errors are not based upon any deficiency in state administration of benefits or corrective action procedures; sanctions, therefore, could have no positive effect on the number of client errors committed, and can only be viewed as punitive and non-productive.

Representative Matsui's bill addresses this very major concern by calling for a comprehensive analysis of the nature of client errors, and the degree to which they can be controlled by states. Further, it mandates the formulation of standards by which to determine whether a client error could have been controlled, and an assessment of the cost-effectiveness of this type of error reduction.

Finally, our present system of Quality Control allows for the release of final error rate statistics by the Federal government no sooner than one to two years after the end of a sample period. This significant lag in feedback seriously impedes the timely formulation and implementation of relevant corrective action procedures. H.R. 1279 calls for an end to this delay, and requires that HHS provide error rate determinations within six months of the end of the sample period, or from when the sample data is submitted. This would certainly help to ensure the treatment of those error prone elements in a timely and effective manner.

In conclusion, Indiana is a state dedicated to the concept of efficient effective quality control in all areas of public assistance. We recognize the public trust inherent in our use of taxpayer dollars, and place a strong priority on program integrity, cost containment, and accountability.

A timely, equitable, and cost-effective Quality Control system would be an invaluable management tool in our continuing efforts against misspent dollars. It is our strong contention that the proposals found in H.R. 1279 would establish a system conducive to these efforts and to the fulfillment of our public trust.

Again, thank you for giving us the opportunity of sharing our concerns with this committee.

Sincerely,

DIANE FORD BARRON,
Assistant Administrator, Quality Control.

STATEMENT OF RUTH MASSINGA, SECRETARY, MARYLAND DEPARTMENT OF HUMAN RESOURCES

I would like to thank the Subcommittee on Public Assistance and Unemployment Compensation for allowing me the opportunity to have this statement placed into the record. Joining my colleagues in state human services administration, I am deeply concerned that the further imposition of inadequate or inconsistently applied AFDC fiscal sanctions on the states will adversely affect the well being of the population of poor families that we serve.

I write as the Chief Executive of one of the six state agencies granted a "good faith" waiver recently for the FFY 1981 sanction period. I am acutely aware that the standards favorably applied to Maryland for that period may yield an unfavorable decision for the subsequent year in which we are also at risk for fiscal penalty. The uncertainlty of the application of current standards is what most troubles me in reviewing the existing quality control system.

While I support the concept of fiscal incentives for States which maintain low error rates in the AFDC program, I am especially sensitive to the disincentives faced by States which, although operating effective quality control systems, are unable to attain the continually changing tolerance levels. If the motive of a quality control system is to serve as the basis for federal monitoring and evaluation of the State's administration of the AFDC program, Congressman Matsui's legislation serves as an important first step toward reforming the Quality Control system in order to achieve fairness and accuracy.

Maryland favors the establishment of ". . . certain mimimum quality control policies and procedures in law". Uniform requirements by law would minimize the differences between the federal government and the States.

The Maryland Department of Human Resources favors the provisions of H.R. 1279 which ensure that: States will receive information on errors on a more timely

basis; States are sanctioned only for errors that they are responsible for (not clients) and that have a negative monetary impact; the error rate ascribed to the state would be the lower bound of the error rate produced by the sampling procedures; a waiver for sanctions be retained; and a standard tolerance level be set at 4%, taking into account factors beyond the control of the states that influence AFDC error rates.

H.R. 1279 is an important and prudent attempt to correct deficiencies of the AFDC Quality Control System. Indeed, we should seize the opportunity to expand the focus of this legislation to include the Food Stamp and Medicaid quality control processes as well.

In closing, I commend Mr. Matsui for proposing legislation that provides realistic guidance for administering the AFDC program. I urge that this subcommittee move to forthrightly solve the glaring inequities in the current quality control system. Please consider Mr. Matsui's proposal, both in fiscal terms and in human terms, and give it a favorable report.

Thank you.

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